

CORNELL UNIVERSITY LAW LIBRARY

The Moak Collection

PURCHASED FOR

The School of Law of Cornell University

And Presented February 14, 1893

IN MEMORY OF

JUDGE DOUGLASS BOARDMAN

FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

Cornell University Library
KD 691.W66

Statute law : the principles which govern



3 1924 021 651 355

law

STATUTE LAW:

THE PRINCIPLES WHICH GOVERN THE CONSTRUCTION
AND OPERATION OF STATUTES.

BY EDWARD WILBERFORCE,
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

LONDON :
STEVENS AND SONS, 119, CHANCERY LANE,
Law Publishers and Booksellers.

1881.

Digitized by Microsoft®

This book was digitized by Microsoft Corporation in cooperation with Cornell University Libraries, 2007.

You may use and print this copy in limited quantity for your personal purposes, but may not distribute or provide access to it (or modified or partial versions of it) for revenue-generating or other commercial purposes.

DEDICATED, BY PERMISSION,
TO THE
RIGHT HON. ROUNDELL, LORD SELBORNE,
LORD HIGH CHANCELLOR OF ENGLAND,
WITH THE RESPECT DUE TO A GREAT LAWYER,
AND A STATESMAN OF INTEGRITY.

PREFACE.

SOME years ago I lighted upon a point of law which furnished a successful objection to the charge contained in an indictment. The point arose upon the construction of a statute, and, before it came on for argument, I made what search I could for authorities in support of my contention. The difficulty I then experienced in finding cases that had a bearing on the subject led me to devote my "intervals of business" to the collection of materials for the work which I now present to my profession.

My first and chief endeavour has been to arrange in a logical order the leading principles by which Statute Law is governed, and to illustrate them as far as possible by a consistent chain of authorities. I have always felt that, unless such a method as this could be adopted, the mere accumulation of cases decided upon the words of particular statutes would be of little service. Sometimes, no doubt, in wading

through such a collection, we may stumble upon an authority which seems to assist an argument, but when it is closely examined it is often found to proceed upon a principle wholly inapplicable to the facts under consideration. Even if we are not thus misled, we are left altogether in want of guidance. The absence of arrangement plunges us into a sea of conflicting decisions. Cases which establish an important rule of construction are so mixed with those which set up an exception to it, that the rule itself is sometimes driven out of the field by sheer weight of numbers. It is true that the practical use of a text-book to practical men consists in the collection of cases, and that, however clearly principles of law may be stated, they must be supported by decisions which are exactly in point, or by judicial expressions of opinion, in order to carry weight with the profession and to have the sanction of authority. But unless those cases are ranged in such order that the reader can tell where he should look for them, and what is the principle to which they refer, he will be committed to a hopeless search and his labour will often be wasted.

How far I may have succeeded in producing a useful work, must be decided by those who consult my pages. I may honestly say that I have taken

great trouble both in collecting and arranging the materials at my disposal; and I trust that I may receive the best reward of my labours in finding that I have lightened the labours of others who pursue the same study.

EDWARD WILBERFORCE.

5, PAPER BUILDINGS, TEMPLE,

January, 1881.

CONTENTS.

CHAPTER I.

	PAGE
STATUTES AND STATUTE LAW	1

CHAPTER II.

THE AUTHORITY OF STATUTES	28
-------------------------------------	----

CHAPTER III.

THE CONSTRUCTION OF STATUTES	99
----------------------------------------	----

CHAPTER IV.

THE OPERATION OF STATUTES	154
-------------------------------------	-----

CHAPTER V.

THE VARIOUS KINDS OF STATUTES	213
-----------------------------------------	-----

CHAPTER VI.

THE SEVERAL PARTS OF A STATUTE	272
------------------------------------------	-----

CHAPTER VII.

THE REPEAL OF STATUTES	309
----------------------------------	-----

CHAPTER I.

STATUTES AND STATUTE LAW.

	PAGE
Statute Law : usual definition	1
Implies that Statute Law is certain	1
Causes of its uncertainty	2
1. Imperfection of language	2
2. Language and style of statutes themselves	3
How far due to the framers of statutes	5
How far to the Legislature	6
3. Judicial interpretation	7
Statute Law : suggested definition	8
Distinction between legislative and judicial functions	9
What is a statute	10
What is authentic record of statutes	12
Legislature is presumed to know the law	12, 13
Effect of erroneous declaration of law	13
Effect of recitals	14
May alter the law	15
Legislature is presumed to know the construction put upon statutes by the Courts	16
By earlier Parliaments	17
Such construction recognised by implication	18
Legislature not presumed to make unnecessary alteration in Common Law	19
Alterations in Statute Law more readily presumed	21
Judicial functions	23
Not to supply deficiencies	24
Not to inquire how statutes were passed	24
This rule has not always been recognised	25
Ancient theories of judicial supremacy	25
As to statutes made against the Law of God	25
Against natural justice	26
Modern refutations of that theory	26

CHAPTER II.

THE AUTHORITY OF STATUTES.

	PAGE
Authority of statutes the highest known to the law	28
What can be done by statutes	28
Authority extends over the whole realm and to everybody within it	30
Everybody presumed to know Statute Law	30
No prescription against a statute	31
Equity cannot relieve against a statute	31
But authority of statutes is confined to its own province	31
Cannot alter the course of nature	31
Does not extend beyond limits of this country	32
Does not extend to foreign things	33
Does not bind future Parliaments	34
Does not extend to impossibilities	35
Limited by the necessity of using express words	36
Express words needed to bind the Crown	36
In what cases the Crown is not bound unless named	37
When the Crown is bound by necessary implication	39
When the Crown is bound though not named	40
Express words needed to take away jurisdiction of superior Courts	42
To take away writ of <i>certiorari</i>	43
To give an appeal	43
To take away right of changing venue	44
Decisions as to the creation of exclusive jurisdictions	45
Express words needed to affect public or private rights	47
When authority of statutes is extended by implication	49
When not	52
Authority must be strictly followed	54
Where a new jurisdiction is conferred	55
Where matters of public interest are concerned	57
Where statute authorises interference with private property	59
When bye-laws are made in pursuance of statutes	61
When certificates are given in pursuance of statutes	62
The authority of statutes cannot be evaded	64
Agreements contrary to policy of statutes void	66
But it is difficult to decide what is an evasion	66

	PAGE
Evasion in the popular sense is not intended	68
Responsibility imposed by statutes cannot be shifted	68
How the authority of statutes may be enforced	69
1. Directly	69
By indictment	69
By action	70
Exception to rule where statute which confers a right creates the remedy	72
The right and remedy must be created by the same statute	74
and by the same part of the statute	76
and must be co-extensive	77
2. Indirectly	80
Contracts made in violation of statutes declared void	80
Actions cannot be brought upon contracts in viola- tion of statutes	81
But where penalties are imposed for protection of the revenue only, no prohibition is implied	83
Cases in which contracts themselves are not avoided	85
Protection given by statutes to those who act under their authority	87
To what persons it is given	87
Justices of the peace	88
Constables and other officers	89
Persons executing public works	91
In cases of omission	91
To what persons the protection is not given	92
There must be an honest belief that the acts done are authorised	94
Reasonable belief not necessary	96
There must be some grounds for such belief	97

CHAPTER III.

THE CONSTRUCTION OF STATUTES.

General Rule of Construction	99
To ascertain the intention of the Legislature	99

	PAGE
Intention is not to be guessed at	103
Not to be inferred from external evidence	105
But the previous state of the law to be remembered	107
Rules in Heydon's case	108
The whole Act to be considered	108
The "golden rule" for the construction of statutes	111
Followed by most of the judges	112
To what extent it prevails	114
Consequences are not to be regarded	116
Sentences to be read grammatically	117
Effect to be given to all the words of the statute	117
Instances in which words have been inserted	118
Instances in which mistakes have been corrected	121
Meaning of words	121
Ordinary grammatical meaning	122
Popular meaning	122
Unless technical meaning has been acquired	124
Unless popular meaning at variance with proper meaning	126
Words always to receive a reasonable meaning	127
Even though that meaning is not strictly accurate	130
Words not to be read too literally	131
Words read in a wider sense than they usually bear	131
Words read in a narrower sense than they usually bear	134
Various meanings given to words	135
In the same Act	136
Words to be read according to subject-matter	137
Is the meaning of words affected by a change of circumstances?	141
Exception to the general rule of construction	141
Where language is doubtful	142
Look to <i>contemporanea expositio</i>	142
Evidenced by unbroken usage	143
Usage must be uniform and general	146
Evidenced by judicial decisions	147
Convenience or expediency	151

CHAPTER IV.

THE OPERATION OF STATUTES.

	PAGE
Commencement of operation	154
Operation of statutes not retrospective	157
Instances of statutes which are not retrospective	158
Vested rights of action not defeated	159
Nor new rights created	161
Instances of statutes which are retrospective	162
Acts which are not properly called retrospective	163
Retrospective operation given by express words	164, 165
Retrospective operation in cases of practice or procedure	166
Operation extended to matters of subsequent creation	166
Operation of statutes confined to things of most frequent occurrence	169
Operation confined to things expressly mentioned	170
Operation of general words may be restrained	171
Not without some reason	172
By the context	173
By recitals	174
By subsequent clauses	174
By the subject-matter	175
To things which are lawful and in harmony with previous policy of law	177
Conflicting opinions as to the effect of general words	178
Operation of general words confined to things <i>ejusdem</i> <i>generis</i>	179, 180
To matters of inferior dignity	183
Not so as to deprive the words used of all effect	184
General words may refer to a larger genus	185
Operation of general references restricted	187
General references restricted <i>reddendo singula singulis</i>	189
Where the general words occur at the end of sections	191
Operation of statutes affected where words are treated as imperative or directory	193
No general rule on this subject	193
Conflict of decisions	194

	PAGE
Cases in which words of permission have been considered imperative	197
Words which give a discretion held to be imperative	199
Cases in which words of permission have been held not to be imperative	201
Effect of regarding language as directory	205
Where statutes fix a time within which acts are to be done	207
Where statutes prescribe the manner in which acts are to be done	209
Operation of statutes restrained where words of prohibition are modified	211

CHAPTER V.

THE VARIOUS KINDS OF STATUTES.

What are the various kinds of statutes	213
ANCIENT AND MODERN STATUTES	213
Greater latitude allowed in construing ancient statutes	214
Words used for examples	215
GENERAL AND SPECIAL STATUTES	218
Public and private statutes	218
Real distinction between general and special statutes	220
What are general statutes	220
What are special statutes	221
Acts giving powers to companies	222
How far special Acts affect strangers	223
AFFIRMATIVE AND NEGATIVE STATUTES	225
Affirmative Acts do not take away a custom	225
or alter the common law	225
DECLARATORY AND ENACTING STATUTES	228
Declaratory Acts are not imperative	229
REMEDIAL AND PENAL STATUTES	230
What are remedial statutes	231
Statutes which are partly penal	232
What is liberal construction	235

	PAGE
Extension of the words of statutes by equity . . .	238
Most common with ancient statutes . . .	239
Language of statutes restrained by equity . . .	242
What are penal statutes . . .	243
What is strict construction . . .	246
Close adherence to the letter of statutes . . .	249
Cases not within the meaning . . .	253
The object of the statute must not be defeated . . .	255
Instances in which this rule has been followed . . .	258
STATUTES IN PARI MATERIA . . .	260
Legislative or judicial interpretation of one Act to be followed in another . . .	261
Provisions made for one Act adopted in another . . .	264
Does express reference to one Act extend to another <i>in pari materiâ</i> ? . . .	266
Extension of the language of statutes by reference to others <i>in pari materiâ</i> . . .	268
TEMPORARY STATUTES . . .	269
Perpetual statute not rendered temporary by unnecessary continuance . . .	270

CHAPTER VI.

THE SEVERAL PARTS OF A STATUTE.

What are the parts of a statute . . .	272
THE TITLE . . .	272
Is the title part of a statute? . . .	272
Cannot restrict the effect of general language . . .	274
May show the intention of the Legislature . . .	274
Sometimes influences the construction of statutes . . .	275
Full title need not be cited . . .	277
THE PREAMBLE . . .	277
Usual definition of preamble . . .	277
Effect usually given to it . . .	278
Cannot control enacting words . . .	278
unless they are vague or ambiguous . . .	278

CONTENTS.

xvii

	PAGE
Instances in which enacting words have gone beyond preamble	280
Effect of recital similar to that of preamble	282
Instances in which enacting words have been restrained by a recital	283
Instances of enacting words being restrained by preamble	285
Conflicts of opinion	286
Preamble or recital may extend enacting words	289
CLAUSES OR SECTIONS	290
Statutes are now divided into sections	290
Inconsistent sections to be reconciled if possible	291
Difficulty of reconciling them	292
Marginal notes no part of sections	293
General headings to groups of sections	294
The interpretation clause	296
Not followed strictly	298
"Include" used to extend, not to define	299
PROVISOS, SAVINGS, AND EXCEPTIONS	300
Saving clause and proviso apparently identical	300
Suggested distinction between them	301
Importance and effect of proviso	302
Proviso or saving cannot enlarge enacting words	303
Distinction between provisos and exceptions	304
SCHEDULES	306
Variance between Act and schedule, the Act prevails	306
Where forms are imperative	307

CHAPTER VII.

THE REPEAL OF STATUTES.

EXPRESS REPEAL OF STATUTES	309
May be in same session as enactment	309
Does not revive statutes already repealed	309
Repealed Act remains in force till new provisions take effect	310

	PAGE
REPEAL BY IMPLICATION	310
What is inconsistency between two statutes	311
Of statute by another passed in the same session	315
Of one part of an Act by another	316
Not to be presumed without great care	318
Where it will not be presumed	318
Limited to part which is repugnant	319
Modification of earlier statute substituted for repeal by implication	320
Repeal by a change of penalty	322
Not by cumulative penalties	324
Repeal not usually effected by affirmative words	326
Unless those words introduce a new law	328
Special Acts not repealed by general	330
This rule followed in early times	332
Modern instances	333
Cases where special privileges are given	334
Special Acts not repealed by subsequent special Acts	338
Where special Acts may be repealed by general Acts	338, 339
General Act may be repealed <i>pro tanto</i> by a special Act	340
How a repeal cannot be effected	341
How a repeal may be prevented	342
Repeal delayed by saving clause	343
Effect of repeal on statutes themselves	344
When repealed Act may be looked at	345
Effect of repeal on powers given by statutes	346

TABLE OF CASES.

Abe—Ant.	PAGE
ABEL <i>v.</i> Lee, L. R. 6 C. P. at p. 371	115, 116
Aberdare Local Board <i>v.</i> Hammett, L. R. 10 Q. B. 162	254
Abergavenny, Earl, <i>v.</i> Brace, L. R. 7 Ex. 145	337
Ablert <i>v.</i> Pritchard, L. R. 1 C. P. 210	341
Abley <i>v.</i> Dale, 11 C. B. 391	117
Ackroyd <i>v.</i> Gill, 5 E. & B. 808	269
Adams <i>v.</i> Bancroft, 3 Sumner, 384	245
Aerated Bread Co. <i>v.</i> Gregg, L. R. 8 Q. B. 355	141
Agnew <i>v.</i> Jobson, 47 L. J. M. C. 67	98
Ailesbury, Earl of, <i>v.</i> Pattison, 1 Doug. at p. 30	184
Albon <i>v.</i> Pyke, 4 M. & G. 421	47
Alderman Backwell's case, 1 Vern. 152	197
Alexander <i>v.</i> Brame, 7 De G. M. & G. at p. 539	67
——— <i>v.</i> Newman, 2 C. B. 122, 136	230
——— Larsen, The, 1 W. Rob. 288	163
Allen, Re, 3 E. & E. 338	56
—— <i>v.</i> Flicker, 10 A. & E. 640	307, 342
—— <i>v.</i> Thompson, L. R. 5 Q. B. 336	133, 185
Allsop <i>v.</i> Day, 7 H. & N. at p. 463	246, 296
Alton Woods, case of, 1 Rep. at p. 47	302
American Fur Co. <i>v.</i> U. S. 2 Peters, 358	257
Anglo-Greek Steam Co., Re, L. R. 2 Eq. 1	181
Ankrin's case, 3 McLean, 285	157
Ann, The, 1 Gallison, 62	156
Anon, Lofft, 438	245
Antony <i>v.</i> Cardenham, Fort. 309	236

Ard—Att.	PAGE
Arding <i>v.</i> Bonner, 2 Jur. N. S. 763	106
——— <i>v.</i> Holmer, 1 H. & N. 85	39
Arnold <i>v.</i> Arnold, 2 Mylne & Craig, 256	33
——— <i>v.</i> Mayor of Gravesend, 2 K. & J. 574, 591	303
——— <i>v.</i> Ridge, 13 C. B. 763	113
Arthur <i>v.</i> Bokenham, 11 Mod. 150, 161	20, 107, 111
Ash <i>v.</i> Abdy, 3 Swans. 664	244
Ashburnham <i>v.</i> Bradshaw, 2 Atk. 36	158
Ashby <i>v.</i> White, 14 State Trials, at p. 785	71
Asplin <i>v.</i> Blackman, 7 Ex. 386	195
Atcheson <i>v.</i> Everitt, Cowp. 391	235
Atkinson <i>v.</i> Fell, 5 M. & S. 240	134
——— <i>v.</i> Newcastle and Gateshead Water Co., L. R. 6 Ex. 404, 2 Ex. D. 441	79
——— <i>v.</i> Queen's Proctor, L. R. 2 P. & D. 255	39
Att.-Gen. <i>v.</i> Allgood, Parker, at p. 15	38
——— <i>v.</i> Andrew, Hardress, at p. 27	40
——— <i>v.</i> Andrews, 1 Ves. Sen. 225	158
——— <i>v.</i> Bailey, 1 Ex. 281	124
——— <i>v.</i> Barry, 4 H. & N. 470	134
——— <i>v.</i> Campbell, L. R. 5 H. L. 524	33
——— <i>v.</i> Cast Plate Glass Co., 1 Anstr. 39	124
——— <i>v.</i> Chelsea Waterworks, Fitzgibbon, 195	302
——— <i>v.</i> Constable, L. R. 4 Ex. D. 172	39
——— <i>v.</i> Donaldson, 7 M. & W. 422; 10 M. & W. 123, 124	37, 38
——— <i>v.</i> Dunn, 1 Ir. Law Rep. (E.), 357	324
——— <i>v.</i> Forbes, 2 Cl. & Fin. 48	33
——— <i>v.</i> G. E. Ry. Co., L. R. 7 Ch. 475; 6 H. L. 367	106
——— L. R. 11 Ch. D. 449, 460, 461, 465	294
——— <i>v.</i> G. N. R. Co., 1 Drew. & Sm. 154, 158	61
——— <i>v.</i> Hackney Local Board, L. R. 20 Eq. 626	94
——— <i>v.</i> Hallett, 2 H. & N. 368	113, 140
——— <i>v.</i> Jeffreys, 13 Price, at p. 580	256
——— <i>v.</i> Lamplough, L. R. 3 Ex. D. 214, 223	346

TABLE OF CASES.

xxi

Att—Bar.

	PAGE
Att.-Gen. <i>v.</i> Lloyd, 3 Atk. 551	158
——— <i>v.</i> Lock, 3 Atk. 166	194
——— <i>v.</i> Lockwood, 9 M. & W. at p. 398 ; 10 M. & W. 464	113, 255
——— <i>v.</i> Magdalen College, 18 Beav. 223	38
——— <i>v.</i> Manchester and Leeds Ry. Co., 1 Rail. Cas. 436	31
——— <i>v.</i> Middleton, Lord, 3 H. & N. 138	244
——— <i>v.</i> Pougett, 2 Price, 381	122, 165
——— <i>v.</i> Powis, Earl, 1 Kay, 186	107, 278
——— <i>v.</i> Primate, The, 1 Jebb & Symes, at p. 317	142
——— <i>v.</i> Saggars, 1 Price, 182	169
——— <i>v.</i> Sillem, 2 H. & C. 482, 575 ; 10 H. L. C. 704	25, 43, 107, 257
——— <i>v.</i> Weymouth, Ambler, 22	273
——— <i>v.</i> Winstanley, 2 Dow. & Cl. 302, 310.	122
——— for Prince of Wales <i>v.</i> Bristol Water- works Co., 10 Ex. 884	165
Ayrton <i>v.</i> Abbott, 14 Q. B. 1	151
BACKWELL's, Alderman's, case, 1 Vern. 152	197
Badger <i>v.</i> Shaw, 2 E. & E. 472	328
Bailey <i>v.</i> De Crespigny, L. R. 4 Q. B. 180	29
Baines <i>v.</i> Swainson, 4 B. & S. 278	302
Baldey <i>v.</i> Parker, 2 B. & C. at p. 40	234
Balfour <i>v.</i> Malcolm, 8 Cl. & Fin. at p. 500	43
Ballinger <i>v.</i> Ferris, 1 M. & W. 628	89
Bane <i>v.</i> Methuen, 2 Bing. 63	50
Bank for Savings <i>v.</i> The Collector, 3 Wallace, 495	347
—— of U. S. <i>v.</i> Lee, 13 Peters. 107	234
—— of Utica <i>v.</i> Smedes, 3 Cowen, 662	221
Barbat <i>v.</i> Allen, 7 Ex. 609	54, 106
Barber <i>v.</i> Gamson, 4 B. & Ald. 281	195
——— <i>v.</i> Tilson, 3 M. & S. 429	167
Barden <i>v.</i> Crocker, 10 Pickering, 383	78
Barnes <i>v.</i> Eddleston, L. R. 1 Ex. D. 102	344
Barnett <i>v.</i> Cox, 9 Q. B. 617	220, 221

Bar—Bir.	PAGE
Barrack <i>v.</i> M'Culloch, 3 K. & J. 110	167
Barraclough <i>v.</i> Greenhough, L. R. 2 Q. B. 1, 612	140
Barrett <i>v.</i> Stockton Ry. Co., 2 M. & G. 134, 3 M. & G. 956	222
Barrington's case, 8 Rep. at 138a	223
Barrow <i>v.</i> Wadkin, 24 Beav. 327	12
Bartlett <i>v.</i> Gibbs, 5 M. & G. at p. 96	307
——— <i>v.</i> Vinor, Carth. 252	80
Barton <i>v.</i> Bricknell, 13 Q. B. 393, 396	113
——— <i>v.</i> Piggott, L. R. 10 Q. B. 86	81
Bayly <i>v.</i> Schofield, 1 M. & S. at p. 350	122
Baynes <i>v.</i> Baynes, 9 Vesey, 462	56
Beals <i>v.</i> Hale, 4 Howard, 37	316
Beardmer <i>v.</i> L. & N. W. Ry. Co., 1 Mach. & G. 112	106
Bearpark <i>v.</i> Hutchinson, 7 Bing. at p. 186	231
Beaufort, Duke of, <i>v.</i> Smith, 4 Ex. 470	15
Beaumont <i>v.</i> Mountain, 10 Bing. 404	220
Becke <i>v.</i> Smith, 2 M. & W. 191, 195	112
Beckford <i>v.</i> Hood, 7 T. R. 620	78
——— <i>v.</i> Wade, 17 Vesey, 87—92	172, 177
Bedford Infirmary, Governors of, <i>v.</i> Bedford Commissioners, 7 Ex. 768	185
Beech <i>v.</i> Eyre, 5 M. & G. 415	199
Beechey <i>v.</i> Sides, 9 B. & C. 806	95
Bell <i>v.</i> Bilton, 4 Bing. 615	164
—— <i>v.</i> Crane, L. R. 8 Q. B. 481	202
—— <i>v.</i> Morrison, 1 Peters, 360	232
Bennett <i>v.</i> Brumfitt, L. R. 3 C. P. 28	123
——— <i>v.</i> Daniel, 10 B. & C. 500	192
——— <i>v.</i> Edwards, 7 B. & C. 586	168
Bensley <i>v.</i> Bignold, 5 B. & Ald. 335	82
Berkeley <i>v.</i> Elderkin, 1 E. & B. 805	73
Beta, The, L. R. 2 P. C. 447	178
Betty <i>v.</i> Nail, 6 Ir. C. L. Rep. (E), at p. 26	152
Biffin <i>v.</i> Yorke, 6 Scott, N. R. 235	9
Billing <i>v.</i> Flight, 6 Taunt. 419	234
Bird <i>v.</i> Gunston, 2 Chit. 459	88
Birkenhead Docks <i>v.</i> Laird, 4 De G. M. & G. 732	332

TABLE OF CASES.

xxiii

Bir—Bow.

	PAGE
Birks <i>v.</i> Allison, 13 C. B. N. S. 23	113
Birmingham Benefit Society, Re, 3 Sim. 421	122
———— Churchwardens <i>v.</i> Shaw, 10 Q. B. 868, 878	127
Birtwhistle <i>v.</i> Vardill, 7 Cl. & Fin. at p. 929	294
Blackburn, Mayor, <i>v.</i> Parkinson, 1 E. & E. 71	73
Blackwell <i>v.</i> England, 8 E. & B. 541	141
———— <i>v.</i> Harper, 2 Atk. 93	83
Blades <i>v.</i> Lawrence, L. R. 9 Q. B. 374	266
Blain, Ex parte, Re Sawers, L. R. 12 Ch. D. 522	33
Blake <i>v.</i> Attersoll, 2 B. & C. 875	285
—— <i>v.</i> Midland Ry. Co., 18 Q. B. 109	276
Blakemore <i>v.</i> Glamorganshire Canal Co., 1 Mylne & K. 162; 2 Cr. M. & R. at p. 141	222
Blanchard <i>v.</i> Sprague, 2 Story, 164	157
———— <i>v.</i> ———, 3 Sumner, 279	121
Blanford <i>v.</i> Morrison, 15 Q. B. 724	184
Blues, Re, 5 E. & B. 291	133
Bode, Baron de, <i>v.</i> The Queen, 13 Q. B. 364	41
Boden <i>v.</i> Smith, 18 L. J. C. P. 121	340
Bodenham <i>v.</i> St. Andrew's, 1 E. & B. 465	122
Bole <i>v.</i> Horton, Vaughan, at p. 373	170
Bolina, The, 1 Gall. at p. 83	257
Bond <i>v.</i> Rosling, 1 B. & S. 371	212
Bones <i>v.</i> Booth, 2 W. Bl. 1226	233
Bonham's case, 8 Rep. 117 a, b, 118 a, b, 26, 109, 292	
Boon <i>v.</i> Howard, L. R. 9 C. P. at p. 308	127
Booth <i>v.</i> Bank of England, 7 Cl. & Fin. 509, 540	65, 66
—— <i>v.</i> Clive, 10 C. B. 827; 20 L. J. C. P. 151	95
Boothroyd, Re, 15 M. & W. 1	121
Bosanquet <i>v.</i> Woodford, 5 Q. B. 310	207
Bostock <i>v.</i> North Staffordshire Ry. Co., 4 E. & B. 798; 3 Sm. & G. 283	61
Bouhey <i>v.</i> Rowbotham, 4 H. & C. 711	130
Boulton <i>v.</i> Crowther, 2 B. & C. 703	29
Bowditch <i>v.</i> Wakefield Local Board, L. R. 6 Q. B. 567	125
Bowes <i>v.</i> Hope Society, 11 H. L. C. 389—402	197

	PAGE
Bow—Bry.	
Bowman <i>v.</i> Blyth, 7 E. & B. 48	206, 208
Bows <i>v.</i> Fenwick, L. R. 9 C. P. 339	185
Boyd <i>v.</i> Croydon Ry. Co., 4 Bing. N. C. 669	131
Bracy's case, 1 Salk. 348	56
Bradley <i>v.</i> Bradley, L. R. 3 P. D. 47	139
Bradshaw <i>v.</i> Tasker, 7 Mylne & Keen, 221	164
Bramston <i>v.</i> Mayor of Colchester, 6 E. & B. 246	339
Branch <i>v.</i> Browne, 2 De G. & Sm. 299	168
Brand <i>v.</i> Hammersmith Ry. Co., L. R. 1 Q. B. 148, 2 Q. B. 337, 4 H. L. 171	295, 296
Brandling <i>v.</i> Barrington, 6 B. & C. 467, 475	239
Branwell <i>v.</i> Penneck, 7 B. & C. 536	182
Braybrooke, Lord, <i>v.</i> Att-Gen., 9 H. L. C. 165	123
Brenan's case, 10 Q. B. 492	210
Brett <i>v.</i> Beals, Moo. & Malk. 421	15, 220
—— <i>v.</i> Brett, 3 Addams, 210	276, 289
Brewer <i>v.</i> Blougher, 14 Peters, 178	122
Brewster <i>v.</i> Kitchell, Salk. 198	29
Bridgman, Re, 1 Drew. & Sm. 164	194, 197
Britt <i>v.</i> Robinson, L. R. 5 C. P. at pp. 513, 514	247
Britton <i>v.</i> Ward, 2 Rolle's Rep. 127	65
Broadbent <i>v.</i> Imperial Gas Co., 7 De G. M. & G. at pp. 447, 448	296
Brook <i>v.</i> Badley, L. R. 4 Eq. at p. 111	116
—— <i>v.</i> Brook, 3 Sm. & G. 481; 9 H. L. C. 193	33
Brooks <i>v.</i> Bockett, 9 Q. B. 847	161
—— <i>v.</i> Cock, 3 A. & E. 138	83
Broughton <i>v.</i> Manchester Waterworks Co., 3 B. & Ald. at p. 10	86
Brown <i>v.</i> Barry, 3 Dallas, 367	244
—— <i>v.</i> Clegg, 16 Q. B. 681	173
—— <i>v.</i> Duncan, 10 B. & C. 93	84
—— <i>v.</i> Holyhead Local Board, 1 H. & C. 601	62
—— <i>v.</i> London, Mayor of, 9 C. B. N. S. 726; 13 C. B. N. S. 828	29
—— <i>v.</i> McMillan, 7 M. & W. 201	112
—— <i>v.</i> The Alina, L. R. 5 Ex. D. 227	179
Bruyeres <i>v.</i> Halcomb, 3 A. & E. 381	63
Bryan <i>v.</i> Child, 5 Ex. 368	295

Buc—Cas.

	PAGE
Buckeridge <i>v.</i> Flight, 6 B. & C. 49	244
Bulkeley <i>v.</i> Schutz, L. R. 3 P. C. 764	33
Burder <i>v.</i> Veley, 12 A. & E. 247	244
Burling <i>v.</i> Harley, 3 H. & N. 271	89
Burn <i>v.</i> Carvalho, 1 A. & E. 895; 4 N. & M. 893	156
Burns <i>v.</i> Carter, 5 Bing. 429	312
—— <i>v.</i> Nowell, L. R. 5 Q. B. D. at p. 454 . .	154
Burton <i>v.</i> Reeve, 16 M. & W. at p. 309 . . .	124
Bush <i>v.</i> Green, 4 Bing. N. C. 41	93
Butcher <i>v.</i> Henderson, L. R. 3 Q. B. 335 . .	322, 349
Butler & Baker's case, 3 Rep. at 27b. 31a. .	100, 132, 246
Butler <i>v.</i> Ford, 1 Cr. & M. 662	89
Buxton <i>v.</i> Mingay, 2 Wilson, at p. 73 . . .	7
CADOGAN <i>v.</i> Kennett, 2 Cowp. at p. 434 . . .	234
Cahill <i>v.</i> L. & N. W. Ry. Co., 30 L. J. C. P. 289	224
Calder <i>v.</i> Bull, 3 Dallas, at p. 391	158
Calder, &c., Navigation Co. <i>v.</i> Pilling, 14 M. & W.	
76	62
Caldow <i>v.</i> Pixell, L. R. 2 C. P. D. 562 . . .	209
Cambrian Ry. Co's. Scheme, Re, L. R. 3 Ch. 278	187
Camden <i>v.</i> Anderson, 6 T. R. 723	190
Cameron <i>v.</i> Cameron, 2 Mylne & Keen, 289 . .	106
Campbell, Ex parte, L. R. 5 Ch. 703	16
Cann <i>v.</i> Clipperton, 10 A. & E. 582	97
Cannan <i>v.</i> Bryce, 3 B. & Ald. 179	83
Canterbury, Archbishop's, case, 2 Rep. 46 . .	183
Capel <i>v.</i> Child, 2 Cr. & J. 558	57
Cargo <i>ex</i> Argos, L. R. 3 A. & E. 558; 5 P. C. 134	179
Carpue <i>v.</i> L. B. & S. C. Ry. Co., 5 Q. B. 747 .	92
Carruthers, Ex parte, 9 East, 44	311
—— <i>v.</i> Payne, 5 Bing. 270	93
Carter & Claycole's case, 1 Leonard, 306 . .	222
—— <i>v.</i> Crawley, Sir T. Ray. at p. 497 . . .	23
—— <i>v.</i> McLaren, L. R. 2 Sc. Ap. at p. 125 . .	30
Casher <i>v.</i> Holmes, 2 B. & Ad. 592	184, 245
Castelli <i>v.</i> Groom, 18 Q. B. 490	202
Castle's case, Cro. Jac. 644	72

Cas—Cle.	PAGE
Castrique <i>v.</i> Page, 13 C. B. 458	293, 317
Caswell <i>v.</i> Cook, 11 C. B. N. S. 637	244
Cates <i>v.</i> Knight, 3 T. R. 442	45
Cavendish <i>v.</i> Worsley, Hobart, 203	31
Chamberlain <i>v.</i> King, L. R. 6 C. P. 474	94
Chambers <i>v.</i> Manchester and Milford Ry. Co., 5 B. & S. 588	59
Chance <i>v.</i> Adams, 1 Ld. Raym. 77	241, 273
Chandos, Marquis, <i>v.</i> Com. Inland Revenue, 6 Ex. 479	235
Chapman <i>v.</i> Milvain, 5 Ex. 61	199
——— <i>v.</i> Purday, 12 M. & W. 303	162
Charlotta, The, 1 Dods. Adm. at p. 392	30
Charrington <i>v.</i> Meatheringham, 2 M. & W. 228	347
Charter <i>v.</i> Graeme, 13 Q. B. 216, 234	207
Chelsea, Vestry of, <i>v.</i> King, 17 C. B. N. S. 629	153
———, Waterworks Co. <i>v.</i> Bowley, 17 Q. B. 358	180
Chick, Ex parte, Re Meredith, L. R. 11 Ch. D. 731	176
Chilton <i>v.</i> London and Croydon Ry. Co., 16 M. & W. 212	62
Chorlton <i>v.</i> Lings, L. R. 4 C. P. 374	123
——— <i>v.</i> Tonge, L. R. 7 C. P. at p. 183	318
Christie <i>v.</i> Richardson, 10 M. & W. 688	132
——— <i>v.</i> Unwin, 11 A. & E. 373	55
Christopherson <i>v.</i> Lotinga, 15 C. B. N. S. 809 ; 33 L. J. C. P. 121	57
Churchill <i>v.</i> Crease, 5 Bing. 177, 180	165, 292
Clack <i>v.</i> Sainsbury, 11 C. B. 695	328
Clarence Ry. Co. <i>v.</i> Great Northern of England Ry. Co. 4 Q. B. 46. . . .	175
Clark <i>v.</i> Gaskarth, 8 Taunt. 531	181
Clarke <i>v.</i> Crowder, L. R. 4 C. P. at p. 643	243
Claydon <i>v.</i> Green, L. R. 3 C. P. 511	294
Clayton, Ex parte, 1 Russell & Mylne, 369	226
———, L. R. 5 Ch. 13	125
Clementi <i>v.</i> Walker, 2 B. & C. 861	33
Clements <i>v.</i> Smith, 3 E. & E. 238	231, 237

Cle—Cot.	PAGE
Clementson <i>v.</i> Williams, 8 Cranch, 72	232
Clicquot's Champagne, 3 Wallace, 115	235
Clugas <i>v.</i> Penaluna, 4 T. R. 466	82
Cobb <i>v.</i> Mid-Wales Ry. Co., L. R. 1 Q. B. 348, 349	24
Cochran's Estates, Re, L. R. 5 Eq. 209	164
Cockburn <i>v.</i> Harvey, 2 B. & Ad. 797	244
Coe <i>v.</i> Lawrance, 1 E. & B. 516	251
Colchester, Lord, <i>v.</i> Kewney, 4 H. & C. 445	122
Cole <i>v.</i> Green, 6 M. & G. 872	211
Colebrooke <i>v.</i> Tickell, 4 A. & E. 916	180
Collier <i>v.</i> Worth, L. R. 1 Ex. D. 464	141
Colman <i>v.</i> E. C. R. Co., 10 Beav. 14	61, 223
Commonwealth <i>v.</i> Alger, 7 Cushing, at p. 89	111
————— <i>v.</i> Duane, 1 Binney, at pp. 607, 608	110
————— <i>v.</i> Kimball, 21 Pickering, 373	324, 349
————— <i>v.</i> Loring, 8 Pickering, at p. 373	260
Cone <i>v.</i> Bowles, 1 Salk. 205	232
Conservators of Thames <i>v.</i> Hall, L. R. 3 C. P. 415	334
Cook <i>v.</i> Clark, 10 Bing. 19, 21	90, 231
——— <i>v.</i> Humber, 11 C. B. N. S. at p. 48	138
——— <i>v.</i> Leonard, 6 B. & C. 351	93, 96, 97
——— <i>v.</i> Tower, 1 Taunt. 372	195
Cooper <i>v.</i> Wandsworth Board of Works, 14 C. B. N. S. 180	49
Cope <i>v.</i> Doherty, 2 De G. & Jones, 614	33, 171
——— <i>v.</i> Rowlands, 2 M. & W. 149	80, 82, 84, 85
Copeland, Ex parte, 2 De G. M. & G. 914	260, 264, 345
Copeman <i>v.</i> Gallant, 1 P. Wms. 320	288
Copland <i>v.</i> Davies, L. R. 5 H. L. 358, 378, 389	286
Corbet's case, 1 Rep. at p. 88 a	241
Core <i>v.</i> James, L. R. 7 Q. B. 135	254
Cornill <i>v.</i> Hudson, 8 E. & B. 429	164
Cornwallis, Re, 11 Ex. 580	159
Cortis <i>v.</i> Kent Waterworks Co. 7 B. & C. 330	131
Costa Rica, Republic of, <i>v.</i> Erlanger, L. R. 3 Ch. D. 62, 69	166
Cottonplanter, The, 1 Paine, 23	156

Cou—Dav.	PAGE
Couch <i>v.</i> Jeffries, 4 Burr. 2460	159
— <i>v.</i> Steel, 3 E. & B. 402	79
Coulbert <i>v.</i> Troke, L. R. 1 Q. B. D. 1.	130
Courtauld <i>v.</i> Legh, L. R. 4 Ex. at p. 130	136
Coverdale <i>v.</i> Charlton, L. R. 4 Q. B. D. at p. 124	191
Cowell <i>v.</i> Chambers, 21 Beav. 619	14
Cowley, Lord, <i>v.</i> Byas, L. R. 5 Ch. D. 944	23
Crake <i>v.</i> Powell, 2 E. & B. 210	195
Craw <i>v.</i> Ramsey, Vaughan, 285	117
Crawford <i>v.</i> Spooner, 6 Moore, P. C. at p. 9	103, 105
Crespigny <i>v.</i> Wittenoon, 4 T. R. at p. 793	278, 285
Creswick <i>v.</i> Rooksby, 2 Bulstr. at p. 51	130
Crisp <i>v.</i> Bunbury, 8 Bing. 394	46
Crofts <i>v.</i> Haldane, L. R. 2 Q. B. 194; 8 B. & S. 194	49
Crooke <i>v.</i> McTavish, 1 Bing. 307	21
Crosley <i>v.</i> Arkwright, 2 T. R. at p. 609	261
Cross <i>v.</i> Watts, 13 C. B. N. S. 239	130
Crouther's case, Cro. Eliz. at p. 655	70
Crow <i>v.</i> Ramsey, Sir T. Jones, at p. 12	29, 31, 117
Cuckfield Burial Board, Re, 19 Beav. 153	38
Cull <i>v.</i> Austin, L. R. 7 C. P. at p. 234	117, 122
Cullen <i>v.</i> Trimble, L. R. 7 Q. B. 416	51
Cunard <i>v.</i> Hyde, E. B. & E. 670	86
Cundell <i>v.</i> Dawson, 4 C. B. 376	81, 85
Curlewis <i>v.</i> Lord Mornington, 7 E. & B. 283	242
Curson's case, 6 Rep. at p. 76 b	187
 DAINES <i>v.</i> Heath, 3 C. B. at p. 941	 244
Dakins <i>v.</i> Seaman, 9 M. & W. 789	327
Daly <i>v.</i> Lord Bloomfield, 5 Ir. Law Rep. Q. B. at p. 77	148
Daniel <i>v.</i> Bingham, 4 Ir. L. R. at p. 293	275
— <i>v.</i> Wilson, 5 T. R. 1	90
Dash <i>v.</i> Van Kleeck, 7 Johnson, 477, 502	157
Davies <i>v.</i> South Staffordshire Ry. Co., 21 L. J. M. C. 52	299
Davis <i>v.</i> Bryan, 6 B. & C. 651	212
— <i>v.</i> Curling, 8 Q. B. 286	91

Dav—Doe.	PAGE
Davis <i>v.</i> Edmondson, 3 B. & P. 382	268
— <i>v.</i> Scrace, L. R. 4 C. P. 172	305
Davison <i>v.</i> Gill, 1 East, 64	307
Davys <i>v.</i> Douglas, 4 H. & N. 180	127
Daw <i>v.</i> Metropolitan Board of Works, 12 C. B. N. S. 161	314
Dawson, Ex parte, L. R. 19 Eq. 433	162
— <i>v.</i> Paver, 5 Hare, 433, 434	220
Day <i>v.</i> Savadge, Hob. 87	26, 27
Dean <i>v.</i> Mellard, 15 C. B. N. S. 25	345
Dearden <i>v.</i> Townsend, L. R. 1 Q. B. 10	61
De Begnis <i>v.</i> Armistead, 10 Bing. 107	83
De Beauvoir <i>v.</i> Welch, 7 B. & C. at p. 278	199
De Boinville <i>v.</i> Arnold, 1 C. B. N. S. 21	175
Denn <i>d.</i> Manifold <i>v.</i> Diamond, 4 B. & C. 243	244
— <i>v.</i> Reid, 10 Peters, at p. 527	104, 111
Deptford Churchwardens <i>v.</i> Sketchley, 8 Q. B. 408	48, 125
De Tabley's, Lord, Settled Estates, Re, 11 W. R. 936	210
Dewhurst <i>v.</i> Pearson, 1 Cr. & M. at p. 376	255
Dewhurst <i>v.</i> Fielden, 7 M. & G. 187	138, 170
De Winton <i>v.</i> Mayor of Brecon, 26 Beav. 533, 543	292
De Wolf <i>v.</i> Lindsell, L. R. 5 Eq. 209	164
Dickenson <i>v.</i> Fletcher, L. R. 9 C. P. 1	251
Dickinson <i>v.</i> N. E. Ry. Co., 2 H. & C. 735	138
Dickson <i>v.</i> R., 11 H. L. C. 184	244
Dimes <i>v.</i> Grand Junction Canal Co., 9 Q. B. 514	170
Ditcher <i>v.</i> Denison	203
Dixon <i>v.</i> Harrison, Vaughan, 37, 38	117, 151
Doe <i>d.</i> Angell <i>v.</i> Angell, 9 Q. B. 328	136, 162
— Bristol Hospital, Governors, <i>v.</i> Norton, 11 M. & W. 928	152
— Bywater <i>v.</i> Brandling, 7 B. & C. 643, 660	110
— Davenish <i>v.</i> Moffatt, 15 Q. B. 257	105
— Ellis <i>v.</i> Owens, 10 M. & W. 521	149
— Evans <i>v.</i> Page, 5 Q. B. 767	160
— Hudson <i>v.</i> Roe, 18 Q. B. 805	274

Doe—Edd.	PAGE
Doe <i>d.</i> Johnson <i>v.</i> Liversedge, 11 M. & W. 517 . . .	164
— Jukes <i>v.</i> Sumner, 14 M. & W. 39 . . .	162
— Myatt <i>v.</i> St. Helen's Ry. Co., 6 Q. B. 369 . . .	138
— Nethercote <i>v.</i> Bartle, 5 B. & Ald. at p. 501	243
— Phillips <i>v.</i> Evans, 1 Cr. & M. 450 . . .	207
— Rochester, Bp. of, <i>v.</i> Bridges, 1 B. & Ad. 847, 859	72
Donegall <i>v.</i> Layard, 8 H. L. C. 465—473 . . .	107
Dore <i>v.</i> Gray, 2 T. R. 358, 365	14
Dover Gaslight Co. <i>v.</i> Mayor of Dover, 7 De G. M. & G. 545	235
Downing <i>v.</i> Capel, L. R. 2 C. P. 461 . . .	98
Dowse, The, L. R. 3 A. & E. 135	179
Drage <i>v.</i> Brand, 2 Wils. 377	199
Dubois <i>v.</i> Hepburn, 10 Peters, 1	238
——— <i>v.</i> McLean, 4 McLean, 489	261
Duck <i>v.</i> Addington, 4 T. R. 447	267
Dunbar, Magistrates of, <i>v.</i> Duchess Roxburgh, 3 Cl. & Fin. 354	144
Dundalk Ry. Co. <i>v.</i> Tapster, 1 Q. B. 667 . . .	74
Dyer <i>v.</i> Best, 4 H. & C. 189	241
Dyke <i>v.</i> Elliott, L. R. 4 P. C. 191	256
EAST <i>v.</i> Pell, 4 M. & W. 665	53
East and West India Docks Co. <i>v.</i> Gattke, 3 McN. & G. at p. 166	17
East India Interest, 3 Bing. at p. 196 . . . 110, 137, 175, 247	
East London <i>v.</i> Mile End, 17 Q. B. 512 . . .	180
Eastern Counties Ry. Co. <i>v.</i> Hawkes, 5 H. L. C. 331, 348	60
————— <i>v.</i> Marriage, 9 H. L. C. 40	9, 109, 114, 295
Eastwood <i>v.</i> Miller, L. R. 9 Q. B. 440 . . .	185
Ebbs <i>v.</i> Boulnois, L. R. 10 Ch. at p. 484 . . .	291
Ecclesiastical Persons, case of, 5 Rep. 14a . . .	40
Eddington <i>v.</i> Borman, 4 T. R. 4	334

Edg—Eva.	PAGE
Edge <i>v.</i> Parker, 8 B. & C. 697	93
Edinburgh and Glasgow Ry. Co. <i>v.</i> Linlithgow, 3 Macq. 704, 717, 730	171
———— Ry. Co. <i>v.</i> Wauchope, 8 Cl. & Fin. 723	24, 224
———— Street Tramways Co. <i>v.</i> Black, L. R. 2 Sc. Ap. 336	106
Edmonds <i>v.</i> Lawley, 6 M. & W. 289	112, 164
Edrich's case, 5 Rep. at p. 118 b	21, 102
Edward <i>v.</i> Trevellick, 4 E. & B. 59, 68	254
Edwards, Ex parte, L. R. 9 Ch. 138	203
———— <i>v.</i> Cooper, 11 Q. B. 33	167
———— <i>v.</i> Edwards, L. R. 2 Ch. D. at p. 297	31
———— <i>v.</i> Exeter, Bishop of, 6 Bing. N. C. 146	261
———— <i>v.</i> Hall, 6 De G. M. & G. at p. 89	67
———— <i>v.</i> Hodges, 15 C. B. 484—9	278
———— <i>v.</i> Rusholme, L. R. 4 Q. B. 554	290
Eliot <i>v.</i> Allen, 1 C. B. 18, 32	93
Elkington <i>v.</i> Holland, 9 M. & W. 659	30
Elliott <i>v.</i> Richardson, L. R. 5 C. P. 744	66
—— <i>v.</i> South Devon Ry. Co., 2 Ex. 725	122
—— <i>v.</i> Swartwout, 10 Peters, 137	124
Ellis <i>v.</i> Arnison, 1 B. & C. 70	130
— <i>v.</i> McCormick, L. R. 4 Q. B. 271	159
— <i>v.</i> O'Neill, 4 Ir. C. L. R. Q. B. 478, 488, 489	118
Elphinstone <i>v.</i> Purchas, L. R. 3 P. C. 245	202
Elston <i>v.</i> Braddick, 2 Cr. & M. 435	165
Ely, Dean of, <i>v.</i> Bliss, 5 Beav. 282; 2 De G. M. & G. at pp. 470, 471	297, 298, 311, 318
———— <i>v.</i> Cash, 15 M. & W. 617	318
Emanuel <i>v.</i> Constable, 3 Russ. 436	289
Emerson <i>v.</i> Emerson, 1 Vent. 187	241
Enterprise, The, 1 Paine, 32	257
Entick <i>v.</i> Carrington, 19 State Trials, 1060	217
Escott <i>v.</i> Mastin, 4 Moore, P. C. 130	148, 225, 318
Evans <i>v.</i> Griffith, 9 Bing. 311	237
—— <i>v.</i> Pratt, 3 M. & G. at p. 767	231
—— <i>v.</i> Rees, 9 C. B. N. S. 391	319
—— <i>v.</i> Stevens, 4 T. R. 224, 459	182
—— <i>v.</i> Williams, 2 Drew. & Sm. 324	158

Eva—Fos.	PAGE
Evatt <i>v.</i> Hunt, 2 E. & B. 374	285
Everard <i>v.</i> Kendall, L. R. 5 C. P. 428	179
Everett <i>v.</i> Wells, 2 M. & G. 269; 2 Scott N. R. at p. 531	118
Ewart <i>v.</i> Williams, 3 Drew. 21, 24	106
Ewer <i>v.</i> Jones, 2 Ld. Raym. 737	71
Exeter, Bishop of, <i>Ex parte</i> , 10 C. B. 140	145, 261
Explorer, The, L. R. 3 A. & E. 289	178
Eyre <i>v.</i> Archer, 16 C. B. N. S. 638	53
Eyston <i>v.</i> Studd, Plowd. at pp. 464, 467	101, 236, 239
 FARLEY <i>v.</i> Bonham, 2 J. & H. 177; 30 L. J. C. 239	 106
Farraday, in the goods of, 31 L. J. P. & M. 7	207
Farran <i>v.</i> Ottiwell, 2 Jebb & Symes, at p. 109	48
Fearnley <i>v.</i> Morley, 5 B. & C. at p. 30	21
Fell <i>v.</i> Burchett, 7 E. & B. 539	4
Fellowes <i>v.</i> Clay, 4 Q. B. 316, 326, 328	107, 279, 287
Fennell <i>v.</i> Ridler, 5 B. & C. 406	83
Fenwick <i>v.</i> Schmalz, L. R. 3 C. P. at p. 315	185
Fergusson, <i>Ex parte</i> , L. R. 6 Q. B. 280	299
——— <i>v.</i> Norman, 5 Bing. N. C. 76	81, 85
Fermoy's, Lord, Claim to Vote, 5 H. L. C. 729 111, 136, 142, 144, 146	
Ferrar <i>v.</i> Commissioners of Sewers, L. R. 4 Ex. 1, 227	29
Finch <i>v.</i> Birmingham Canal Co., 5 B. & C. 820	255
Fitzgerald <i>v.</i> Champneys, 2 J. & H. 31	331, 332, 336
Fletcher <i>v.</i> Lord Sondes, 3 Bing. at p. 580	132, 247
Fludyer <i>v.</i> Sir T. Lombe, cas. temp. Hard. 307	244
Foley, Lady, <i>v.</i> Fletcher, 3 H. & N. 780—782	257
Folkard <i>v.</i> Met. Ry. Co., L. R. 8 C. P. 470	139
Fordyce <i>v.</i> Bridges, 1 H. L. C. 1	103
Forsdike <i>v.</i> Stone, L. R. 3 C. P. 607	133
Forster <i>v.</i> Taylor, 5 B. & Ad. 887,	82
Foster's case, 11 Rep. at p. 63 b	228, 311, 325, 329
Foster <i>v.</i> Banbury, 3 Sim. 40	289

Fos—Gle.

	PAGE
Foster <i>v.</i> Oxford, &c., Rail. Co., 13 C. B. 200	86
Fotherby <i>v.</i> Met. Rail. Co., L. R. 2 C. P. at p. 194	71, 72
Fowler <i>v.</i> Padgett, 7 T. R. 509	130
Fox <i>v.</i> Bishop of Chester, 2 B. & C. at p. 655 ; 6 Bing. 1	65
Franconia, The, L. R. 2 P. D. 163	178
Frankland, Re, L. R. 8 Q. B. 18	53
Fredericks <i>v.</i> Howie, 1 H. & C. 38	127
— <i>v.</i> Payne, 1 H. & C. 584	127
Free <i>v.</i> Burgoyne, 5 B. & C. 400	178
Freeman <i>v.</i> Moyes, 1 A. & E. 338	162
Freud <i>v.</i> Dennett, 4 C. B. N. S. 576	59, 211

GABY <i>v.</i> Wilts and Berks Canal Co., 3 M. & S. 580	92
Gale <i>v.</i> Mead, 2 Denio, 160	208
Galena, City of, <i>v.</i> Amy, 5 Wallace, 705	200
Gallini <i>v.</i> Laborie, 5 T. R. 242	83
Galloway <i>v.</i> Mayor of London, L. R. 1 H. L. 34	60
Gambart <i>v.</i> Sumner, 5 H. & N. 5 ; 29 L. J. Ex. 98	22
Garland <i>v.</i> Carlisle, 4 Cl. & Fin. 711 ; 2 Cr. & M. at p. 39	144, 173
Garnet <i>v.</i> Bradley, L. R. 2 Ex. D. 349, 3 App. Cas. 944	339, 340
Gas Light and Coke Co. <i>v.</i> Turner, 5 Bing. N. C. 666 ; 6 Bing. N. C. 324	83
General Iron Screw Colliery Company <i>v.</i> Schu- mann, 29 L. J. C. 877	20
General Steam Navigation Co. <i>v.</i> Morrison, 13 C. B. 581	73
Gibson <i>v.</i> Bradford, 4 E. & B. 586	52
Gildart <i>v.</i> Gladstone, 11 East, 675	244
Giles <i>v.</i> Grover, 1 Cl. & Fin. 187	107, 113
Gilmore <i>v.</i> Shuter, T. Jones, 108	160
Gipps <i>v.</i> Hume, 2 J. & H. 517	66
Girdlestone <i>v.</i> Allan, 1 B. & C. 61	195
Glaholm <i>v.</i> Barker, L. R. 1 Ch. 223	337
Glennon's case, Alcock's Reg. Cases, at p. 85	262

Gol—Hal.	PAGE
Goldsmid <i>v.</i> Hampton, 5 C. B. N. S. 94 . . .	18
Goldson <i>v.</i> Buck, 15 East, 372	338
Gooche's case, 5 Rep. 60 b	234
Gordon <i>v.</i> Howden, 12 Cl. & Fin. 237 . . .	81
Gorely, <i>Ex parte</i> , re Barker, 4 De G. J. & S. 477	282
Gorham <i>v.</i> Bishop of Exeter, Re, 5 Ex. 663 .	106, 145
—— <i>v.</i> ————— 15 Q. B. 52—74	144, 145
Gorris <i>v.</i> Scott, L. R. 9 Ex. 125	80
Gorton <i>v.</i> Champneys, 1 Bing. at p. 301 . . .	233
Gosden <i>v.</i> Elphick, 19 L. J. Ex. 9	89
Gosling <i>v.</i> Veley, 12 Q. B. 407 ; 4 H. L. C. 727, 781	244
Gough <i>v.</i> Davies, 2 K. & J. 623	283
—— <i>v.</i> Everard, 2 H. & C. at p. 8	246
Grace <i>v.</i> Clinch, 4 Q. B. 606	133
Graham <i>v.</i> Ewart, 1 H. & N. 563	137
Grant <i>v.</i> Ellis, 9 M. & W. 113	298
Gray <i>v.</i> Cookson, 16 East, 13	325
—— <i>v.</i> Pullen, 5 B. & S. 970	69
Great Central Gas Co. <i>v.</i> Clarke, 11 C. B. N. S. 827, 829	314
Green <i>v.</i> Jenkins, 1 De G. F. & J. 454	227
—— <i>v.</i> The Queen, L. R. 1 App. Cas. 513, 546	228
—— <i>v.</i> Wood, 7 Q. B. 178	105, 131
Greenway <i>v.</i> Hurd, 4 T. R. 553	90
Gregory's case, 6 Rep. 19 b	327, 333
Gresty <i>v.</i> Gibson, L. R. 1 Ex. 112	29
Grisewood & Smith's case, 4 De G. & J. 544 .	345
Gunnestad <i>v.</i> Price, L. R. 10 Ex. 65	179
Guthrie <i>v.</i> Fisk, 3 B. & C. 178	125, 223, 239
Gwyn <i>v.</i> Hardwick, 1 H. & N. 53	146
Gwynne <i>v.</i> Burnell, 7 Cl. & Fin. 607, 696 . .	104, 215
 HADDEN <i>v.</i> The Collector, 5 Wallace, 107 . .	107, 275
Hadley <i>v.</i> Perks, 7 B. & S. 839	21
Hall <i>v.</i> Dyson, 17 Q. B. 785	66
—— <i>v.</i> Franklin, 3 M. & W. 272, 275	152

Hal—Hir.	PAGE
Halliday's Settled Estates, Re, L. R. 12 Eq. 199 .	210
Halliswell v. Bridgewater Corporation, 2 Anderson, at p. 192	301
Halton v. Cove, 1 B. & Ad. at p. 558	278
Hamilton v. Grainger, 5 H. & N. 40	82
Hannant v. Foulger, 8 B. & S. 430	272, 278
Harcourt v. Fox, 1 Show. at p. 520	329
Harding v. Headington, L. R. 9 Q. B. 157	68
Hardwick v. Moss, 7 H. & N. 136, 141	91
Hardy v. Bern, 5 T. R. 636	199
Harriet, The, 1 Story, 251	257, 261
Harrison v. James, 2 Chit. 457	231, 237
Harrod v. Worship, 1 B. & S. 381	48
Hartley v. Hooker, 2 Cowp. 523	55
Hawkins v. Gathercole, 6 De G. M. & G. 1.	172, 176
Hay v. Lord Provost of Perth, 4 Macq. Sc. Ap., at p. 544	240
Hazeldine v. Grove, 3 Q. B. 997	88
Healey v. Thames Valley Ry. Co., 5 B. & S. 769 .	141
Hearne v. Garton, 2 E. & E. 66	254
Heasman v. Pearce, L. R. 8 Eq. 599	231
Heath v. Brewer, 15 C. B. N. S. 803	98
Heathcote v. North Staffordshire Ry. Co., 2 Macn. & G. 100	31
Hedley v. Fenwick, 3 H. & C. 349	181
Henderson v. Sherborne, 2 M. & W. 239	319
Henley & Co., Re, L. R. 9 Ch. D. 469	39
Hennah v. Whyman, 2 C. M. & R. 239	307
Henslow v. Fawcett, 3 A. & E., at p. 58	255
Herman v. Seneschal, 13 C. B. N. S. 392	94, 97
Heydon's Case, 3 Rep. 7 b.	108
Hibernian Mine Co. v. Tuke, 8 Ir. C. L. R. 321 .	258, 259
Higginbotham v. Perkins, 8 Taunt. 795, 801 . .	231
Hill and Dechair, Styles, at p. 382	44
— v. Grange, Plowd., at p. 178	236, 240
— v. Hall, L. R. 1 Ex. D. 411	319
Hillman, Ex parte, Re Pumfrey, L. R. 10 Ch. D. 622	124
Hinde v. Chorlton, L. R. 2 C. P., at p. 116 . .	191
Hirst v. Molesbury, L. R. 6 Q. B. 130	250

Hit—Hun.	PAGE
Hitcham <i>v.</i> Brooks, Winch, at p. 123 . . .	246
Hitchcock <i>v.</i> Way, 6 A. & E. 943 . . .	161
Hodgkinson <i>v.</i> Wilkie, 1 Hagg. Con. Rep. 262 . .	244
Hodgson <i>v.</i> Temple, 5 Taunt. 181 . . .	85
Hodsden <i>v.</i> Harridge, 2 Wms. Saund., 64a . .	242
Hole <i>v.</i> Sittingbourne and Sheerness Ry. Co., 6 H. & N. 488	69
Holland's Case, 4 Rep. 76a, 77a	218, 221
Holme <i>v.</i> Guy, L. R. 5 Ch D. 901, 905 . . .	108
Holmes <i>v.</i> Tutton, 5 E. & B. 65, 77	167
Holt, Re, L. R. 4 Q. B. D. 29	293, 317
—— <i>v.</i> Miers, 5 M. & W. 173	103
Hopkins <i>v.</i> Crowe, 4 A. & E. 774	93
Horn <i>v.</i> Ion, 4 B. & Ad. 78	21
—— <i>v.</i> Thornborough, 3 Ex. 846	95
Hornby <i>v.</i> Houlditch, Andrews 40 ; 1 T. R. 93 . .	220
Horne <i>v.</i> Earl Camden, 2 H. Bl., at p. 536 . .	23
Horsnail <i>v.</i> Bruce, L. R. 8 C. P., at p. 385 . .	304, 346
Howard <i>v.</i> Bodington, L. R. 2 P. D. 203 . . .	209
Howe's Case, 21 Vermont, 619	157
Hubbard <i>v.</i> Johnstone, 3 Taunt. 177	245
Hudd <i>v.</i> Ravenor, 2 Brod. & Bing. 662 . . .	194
Hudson <i>v.</i> Tooth, L. R. 3 Q. B. D. 46	55
Huggins <i>v.</i> Waydey, 15 M. & W. 357	95
Hughes <i>v.</i> Buckland, 15 M. & W. 346, 355 . .	95
—— <i>v.</i> Chatham, Overseers, 5 M. & Gr., at p. 80	122
—— <i>v.</i> Chester and Holyhead Ry. Co., 1 Drew. & Sm. 536 ; 31 L. J. C. 97	279
—— <i>v.</i> Done, 1 Q. B. 294	281
—— <i>v.</i> Lumley, 4 E. & B. 358	158
Huidekoper <i>v.</i> Burrus, 1 Wash. C. C. R. 119 . .	301
Hulkes <i>v.</i> Day, 10 Sim., at p. 47	165
Hull Dock Co. <i>v.</i> Browne, 2 B. & Ad., at pp. 58, 59	223
Hunfray <i>v.</i> Scroope, 13 Q. B., pp. 512, 513 . .	103
Hunt <i>v.</i> Wimbledon Local Board, L. R. 3 C. P. D. 208, 4 C. P. D. 48	59
Hunter <i>v.</i> Nockolds, 1 Macn. & G. 640	272
Huntingtower, Lord, <i>v.</i> Gardiner, 1 B. & C. 297 .	233, 247, 251

TABLE OF CASES.

xxxvii

Hut—Jon.	PAGE
Hutchins <i>v.</i> Kilkenny Ry. Co., 9 C. B. 536 . . .	71
——— <i>v.</i> Player, Orl. Bridg., at p. 319 . . .	177
Huxham <i>v.</i> Wheeler, 3 H. & C. 80 . . .	101
Hyde <i>v.</i> Johnson, 2 Bing. N. C., at p. 780 . . .	169
 INDIA, The, 33 L. J. Adm. 193 . . .	342
Industry, The, 1 Gall., at pp. 117, 118 . . .	257
Ings <i>v.</i> London & South Western Ry. Co., L. R. 4 C. P. 17 . . .	155
Ironsides, The, Lush. 458 . . .	157
Irresistible, The, 7 Wheaton 551 . . .	269
Irving <i>v.</i> Wilson, 4 T. R. 485, 487 . . .	93
Isberg <i>v.</i> Bowden, 8 Ex. 860 . . .	117
Islington Market Bill, 3 Cl. & Fin. 513 . . .	11
 JACKSON <i>v.</i> Woolley, 8 E. & B. 778, 787 . . .	159
James <i>v.</i> Saunders, 10 Bing. 429 . . .	88
Jamieson <i>v.</i> Att.-Gen., Alcock & Napier, 375 . . .	156
Jaques <i>v.</i> Chandler, Lutw. 1410 . . .	221
Jarman, Ex parte, L. R. 4 Ch. D., at p. 838 . . .	205
Jefferys <i>v.</i> Boosey, 4 H. L. C. 815—980 . . .	32, 33
Jeffries <i>v.</i> Alexander, 8 H. L. C. 617—665 . . .	65, 67, 274, 278
 Jenkins <i>v.</i> Green, 27 Beav. 440 . . .	59
Jenkinson <i>v.</i> Thomas, 4 T. R. 665 . . .	250
Jennings <i>v.</i> Haithwait, 1 Brownlow, 208 . . .	221
Johnes <i>v.</i> Johnes, 3 Dow. 15 . . .	235
Johnson <i>v.</i> Byrd, Hempstead, 434 . . .	316
——— <i>v.</i> Hudson, 11 East, 180 . . .	84
——— <i>v.</i> Upham, 2 E. & E. 250, 263 . . .	275
Johnstone <i>v.</i> Huddleston, 4 B. & C. 922, 936 . . .	174, 284
Jolliffe <i>v.</i> Rice, 6 C. B. 10 . . .	138
——— <i>v.</i> Wallasey Local Board, L. R. 9 C. P. 62 . . .	91
Jones <i>v.</i> Axen, 1 Ld. Raym. 119 . . .	221
——— <i>v.</i> Brown, 2 Ex. 332 . . .	13
——— <i>v.</i> Cook, L. R. 6 Q. B. 505 . . .	299
——— <i>v.</i> Gooday, 9 M. & W. 736 . . .	96, 97

Jon—Lan.	PAGE
Jones <i>v.</i> Harrison, 6 Ex. 328	195, 196
— <i>v.</i> Hayes, 1 Ir. L. R. Q. B. 341	335
— <i>v.</i> Mersey Docks, 11 H. L. C. 443; 20 C. B. N. S. 124	14, 17, 37
— <i>v.</i> Morris, 6 B. & S. 198	53
— <i>v.</i> Smart, 1 T. R., at p. 52	24
— <i>v.</i> Williams, 3 B. & C. 762	89
Joseph Suche & Co. Limited, Re, L. R. 1 Ch. D. 48	159
Joule <i>v.</i> Taylor, 7 Ex. 58	91
Jubb <i>v.</i> Hull Dock Co., 9 Q. B. 443, 455	119
Julius <i>v.</i> Bishop of Oxford, L. R. 5 App. Ca. 214	203
 KEABLE <i>v.</i> Payne, 8 A. & E. 555	212
Keene <i>v.</i> U. S., 5 Cranch, 304	121
Kellock's case, L. R. 3 Ch. at p. 781	13
Kemp <i>v.</i> Burt, 4 B. & Ad. p. 431—2	31
Kennedy <i>v.</i> Gibson, 8 Wallace, 498	264
Kent <i>v.</i> G. W. R. Co., 3 C. B. 714	92
Kidson <i>v.</i> Turner, 3 H. & N. 581	123
Kimbray <i>v.</i> Draper, L. R. 3 Q. B. 160	166
Kimbro <i>v.</i> Colgate, 5 Blatchf. C. C. 229	349
Kine <i>v.</i> Evershed, 10 Q. B. 143	97
King <i>v.</i> Burrell, 12 A. & E. 460, 468	118
Kingsford <i>v.</i> G. W. R. Co., 16 C. B. N. S. 761; 33 L. J. C. P. 307	36
Kirby <i>v.</i> Simpson, 10 Ex. 358	88
Kirk <i>v.</i> Nowell, 1 T. R. 125	221
Kitchen <i>v.</i> Shaw, 6 A. & E. 729.	182
Knight <i>v.</i> Turquand, 2 M. & W. 101	93
 LAKE <i>v.</i> Butler, 5 E. & B. 92, 95	17
Lamb <i>v.</i> North London Ry. Co., L. R. 4 Ch. 522	245
Lancaster Canal Co. <i>v.</i> Parnaby, 11 A. & E. at p. 231	196
— and Carlisle Ry. Co. <i>v.</i> L. & N. W. Ry. Co., 2 K. & J. 293.	31

Lan—Log.

	PAGE
Lane <i>v.</i> Bennett, 1 M. & W. 70	267
— <i>v.</i> Cotton, 12 Mod. 485	167
Lang <i>v.</i> Spicer, 1 M. & W. 135	330
Langton <i>v.</i> Hughes, 1 M. & S. 593	82
Lathropp's Charity, Re, L. R. 1 Eq. 467, 470	231
Latless <i>v.</i> Holmes, 4 T. R. 660	155
Law <i>v.</i> Dodd, 1 Ex. 845	129
— <i>v.</i> Hodson, 11 East, 300	82, 85
Lawrence <i>v.</i> King, L. R. 3 Q. B. 345	22
Lawson <i>v.</i> Dumlin, 9 C. B. 54	92
Lawton <i>v.</i> Miller, 6 B. & C. at p. 355	93
Lee <i>v.</i> Bude & Torrington Ry. Co., L. R. 6 C. P. 582	25, 27
— <i>v.</i> Simpson, 3 C. B. 871	254
Lees <i>v.</i> Summersgill, 17 Ves. 508	289
Leete <i>v.</i> Hart, L. R. 3 C. P. 322	98
Le Feuvre <i>v.</i> Miller, 8 E. & B. 332	206
Leicester, Earl of, <i>v.</i> Heydon, Plowd. at p. 398	15, 29
— Mayor of, <i>v.</i> Burgess, 5 B. & Ad. 246	225
Leigh <i>v.</i> Kent, 3 T. R. 362	342
Leroux <i>v.</i> Brown, 22 L. J. C. P. at p. 3	20
Levi <i>v.</i> Sanderson, L. R. 4 Q. B. 330; 9 B. & S. 410	322
— <i>v.</i> Yates, 8 A. & E. 129	83
Lichfield, Mayor of, <i>v.</i> Simpson, 8 Q. B. 65	78
Lidster <i>v.</i> Borrow, 9 A. & E. 654	93, 96
Lightfoot <i>v.</i> Tenant, 1 B. & P. 551	82
Lincoln College case, 3 Rep. 59 b	109
Lindsay <i>v.</i> Cundy, L. R. 1 Q. B. D. at p. 358	297
Little <i>v.</i> Poole, 9 B. & C. 192	81
Liverpool Borough Bank <i>v.</i> Turner, 1 J. & H. 159; 29 L. J. Ch. 827; 2 De G. F. & J. 502; 30 L. J. Ch. 379	193, 308
— Library <i>v.</i> Mayor of Liverpool, 5 H. & N. 526	334
Llandaff, &c., Market Co. <i>v.</i> Lyndon, 8 C. B. N. S. 515	186
Llewellyn <i>v.</i> Rous, L. R. 2 Eq. 27	231
Lloyd, Ex parte, 1 Sim. N. S. at p. 250	14
Logan <i>v.</i> Earl of Courtown, 13 Beav. 22	103

	PAGE
Lon—Mac.	
London & Blackwall Ry. Co. <i>v.</i> Limehouse Board, 3 K. & J. 123	332, 336
London & Brighton Ry. Co. <i>v.</i> L. & S. W. Ry. Co., 4 De G. & J. at p. 396	177
_____ <i>v.</i> Watson, L. R. 3 C. P. D. 429	61
L. C. & D. Ry. Co. Arrangement Act, Re, L. R. 5 Ch. 671	31
_____ <i>v.</i> Wandsworth Board, L. R. 8 C. P. at p. 189	340
London, City of, <i>v.</i> Wood, 12 Mod. at pp. 687, 688	26
London & Eastern Banking Cor., Re, 4 K. & J. 273, 2 De G. <i>v.</i> J. 498	199
London Grand Junction Co. <i>v.</i> Freeman, 2 M. & G. 606	211
L. & S. W. Ry. Co. <i>v.</i> Blackmore, L. R. 4 H. L. at p. 615	122
Looker <i>v.</i> Halcomb, 4 Bing. 183	244
Love <i>v.</i> Hinckley, 1 Abbott, 436	147
Lovelace's case, Sir W. Jones, 270	229
Lowther <i>v.</i> Earl of Radnor, 8 East, 113	182
Lucey <i>v.</i> Ingram, 6 M. & W. 316	112
Lucy <i>v.</i> Levington, 1 Vent. at p. 176	223
Lyde <i>v.</i> Barnard, 1 M. & W. at pp. 113, 114	131
Lyn <i>v.</i> Wyn, Bridg. at p. 127	331
 McCLUNY <i>v.</i> Silliman, 3 Peters, 270	 232
Macdougall <i>v.</i> Paterson, 11 C. B. 755	195, 197
Mace <i>v.</i> Cadell, Cowp. 232	289
Macgregor <i>v.</i> Dover, &c., Ry. Co., 18 Q. B. 618	81
McKeowne <i>v.</i> Bradford, 7 Ir. Jur. N. S. (E. C.) 109—174	210
McKinnell <i>v.</i> Robinson, 3 M. & W. 434	82
McMaster <i>v.</i> Lomax, 2 Myl. & Keen. 32	106
McWilliam <i>v.</i> Adams, 1 Macq. 120	143, 260, 261

Mad—Min.	PAGE
Madrazo <i>v.</i> Willes, 3 B. & Ald. 353	34
Magdalen College case, 11 Rep. 66 b	38
Mahony <i>v.</i> Wright, 10 Ir. C. L. R. (Q. B.) 420	342
Mansell <i>v.</i> The Queen, 8 E. & B. 72	16, 144, 145
Mare <i>v.</i> Sandford, 1 Giff. 288	66
Margate Pier Co. <i>v.</i> Hannam, 3 B. & Ald. 266, 269, 270	87
Marsh <i>v.</i> Higgins, 9 C. B. 551	160
Marshall <i>v.</i> Martin, L. R. 5 Q. B. 239	319
————— <i>v.</i> Nicholls, 18 Q. B. 882	73
Marshalsea, case of the, 10 Rep. 75 b	70
Marson <i>v.</i> Lund, 13 Q. B. 664	197
Martin <i>v.</i> Hemming, 18 Jur. 1002	106
Martin <i>v.</i> Hunter's Lessee, 1 Wheaton, 326	122
————— <i>v.</i> Mackonochie, L. R. 2 A. & E. at pp. 123, 197	202
Mason <i>v.</i> Armitage, 13 Ves. 36	280
Mather <i>v.</i> Brown, L. R. 1 C. P. D. 596	266
Matthews <i>v.</i> Zane, 7 Wheat. 164	156
Mattison <i>v.</i> Hart, 14 C. B. 357	109, 113
May <i>v.</i> G. W. R. Co., L. R. 7 Q. B. at p. 384	244
Meath, Bp. of, <i>v.</i> Marquis of Winchester, 3 Bing. N. C. 205	131, 132
Merivale <i>v.</i> Exeter Road, L. R. 3 Q. B. 149	192
Mersey Docks, Trustees, <i>v.</i> Gibbs, L. R. 1 H. L. 110	27
Mestaer <i>v.</i> Gillespie, 11 Ves. at p. 627	31
Michell <i>v.</i> Brown, 1 E. & E. 267	282, 323
Middleton <i>v.</i> Crofts, 2 Atk. 674	327
Midgley <i>v.</i> Richardson, 14 M. & W. 595	181
Midland Ry. Co. <i>v.</i> Ambergate Ry. Co., 10 Hare, 359	297
————— <i>v.</i> Pye, 10 C. B. N. S. 191	158
Miller <i>v.</i> Salomons, 7 Ex. 546, 8 Ex. 778	112, 217
Mills <i>v.</i> Wilkins, 6 Mod. 62; 2 Salk. 609	273, 278
Milne <i>v.</i> Graham, 1 B. & C. 192	231
Minet <i>v.</i> Leman, 20 Beav. 269, 278	20, 177
Minis <i>v.</i> U. S., 15 Peters, 423	301
Minors <i>v.</i> Mechanics' Bank of Alexandria, 1 Peters, 46	203

Mir—Mye.	PAGE
Mirfin <i>v.</i> Attwood, L. R. 4 Q. B. 330 ; 9 B. & S. 414	322
Mitcalfe <i>v.</i> Hanson, L. R. 1 H. L. at p. 250	14
Mitchell <i>v.</i> Blake, 1 Hud. & Brooke, at p. 200	290
Mollwo <i>v.</i> Court of Wards, L. R. 4 P. C. at p. 437	13
Moon <i>v.</i> Durden, 2 Ex. 22.	159, 165
Moore <i>v.</i> Shepherd, 10 Ex. 424 ; 1 H. & N. 115, 125	220
Moreron's case, 1 Vent. 30	241
Morgan <i>v.</i> Crawshay, L. R. 5 H. L. 304	142, 144, 146, 171
——— <i>v.</i> Palmer, 2 B. & C. 729	89
——— <i>v.</i> Parry, 17 C. B. 334	210
——— <i>v.</i> Thorne, 7 M. & W. 400	348, 349
Morisse <i>v.</i> Royal British Bank, 1 C. B. N. S. 67 —87	197, 333
Morris <i>v.</i> Hunt, 1 Chit. 453	221
——— <i>v.</i> Mellin, 6 B. & C. at pp. 449, 450	48, 192, 244
Morton <i>v.</i> Mahon, 2 Ir. Jur. O. S. 238, 240	75
Moser <i>v.</i> Newman, 6 Bing. 556	22
Moss, Ex parte, L. R. 3 Ch. 29	313
——— <i>v.</i> London Commissioners of Sewers, 4 E. & B. 679	152
Motteram <i>v.</i> E. C. R. Co., 7 C. B. N. S. 80	113, 115
Mount <i>v.</i> Taylor, L. R. 3 C. P. 645	322
Mountjoy's case, 5 Rep. 5a, 5b	102
——— <i>v.</i> Wood, 1 H. & N. 58	39
Muller <i>v.</i> Baldwin, L. R. 9 Q. B. 457	122
Munday <i>v.</i> Stubbs, 10 C. B. 432	60
Murphy <i>v.</i> Leader, 4 Ir. L. R. Q. B. at pp. 143, 144	239
Murray <i>v.</i> Charming Betsy, 2 Cranch, at p. 118	20
——— <i>v.</i> East India Co., 5 B. & Ald. at p. 215	261
——— <i>v.</i> The Queen, 7 Q. B. 703	165
——— <i>v.</i> Reeves, 8 B. & C. 421	66
Murrey <i>v.</i> Eyton, Sir T. Raymond, 355	21, 24
Myers <i>v.</i> Baker, 3 H. & N. 812	258
——— <i>v.</i> Veitch, L. R. 4 Q. B. 649	193

Nag—Oak.

	PAGE
NAGLE <i>v.</i> Ahern, 3 Ir. L. R. (E.) 41	146
Nares <i>v.</i> Rowles, 14 East, 510, 518	156
Neath & Brecon Ry. Co., Re, L. R. 9 Ch. at p. 264	194
Nelmes <i>v.</i> Hedges, 2 Dowl. N. S. 350	133
Nerot <i>v.</i> Wallace, 3 T. R. 17	66
Newburgh Turnpike Co. <i>v.</i> Miller, 5 Johns. Ch. 101	196, 203
Newcastle Corporation <i>v.</i> Att.-Gen., 12 Cl. & Fin. 402	131
Newell <i>v.</i> People, 3 Selden (or 7 New York), at p. 97	117
Newington Local Board <i>v.</i> Cottingham Local Board, L. R. 12 Ch. D. 725	29
Newport Bridge, Re, 2 E. & E. 377; 29 L. J. M. C. 52	202
Newton <i>v.</i> Cowie, 4 Bing. 241	148
——— <i>v.</i> Ellis, 5 E. & B. 115; 24 L. J. Q. B. 337.	91
——— <i>v.</i> Nancarrow, 15 Q. B. 144, 150, 152	110
——— <i>v.</i> Spencer, 4 Bing. N. C. 174	161
New York, Mayor of, <i>v.</i> Furze, 3 Hill, 612.	198
Nicholl <i>v.</i> Allen, 1 B. & S. 928	193
Nixon <i>v.</i> Phillips, 7 Ex. 188	24, 328
Noble <i>v.</i> Durell, 3 T. R. 271	29
Norcutt <i>v.</i> Dodd, Cr. & Phill. 100	167
Norris <i>v.</i> Barnes, L. R. 7 Q. B. 537	265
——— <i>v.</i> Crocker, 13 Howard, 429	349
North British Ry. Co. <i>v.</i> Tod, 12 Cl. & Fin. 722—733	106
Nothard <i>v.</i> Pepper, 17 C. B. N. S. 39, 50	243
Notley <i>v.</i> Buck, 8 B. & C. at p. 164	24
Novello <i>v.</i> Sudlow, 12 C. B. 77	78
Nowell <i>v.</i> Mayor of Worcester, 9 Ex. 465	105, 211
Nutter <i>v.</i> Accrington Local Board, L. R. 4 Q. B. D. 375	300
OAKELEY <i>v.</i> Rigby, 3 Scott, 194	34
Oakley, Lord, <i>v.</i> Kensington Canal Co., 5 B. & Ad. 138, 145	92

Oat—Par.	PAGE
Oath before Justices, 12 Rep. 131	50
O'Brien <i>v.</i> Dillon, 9 Ir. C. L. R. (Q. B.) 318	83
O'Flaherty <i>v.</i> McDowell, 6 H. L. C. 179	6, 329
Ogden <i>v.</i> Blackledge, 2 Cranch, 276	9
——— <i>v.</i> Strong, 2 Paine, 584	104, 111, 151
Oldaker <i>v.</i> Hunt, 19 Beav. at p. 489, 490 ; 6 De G. M. & G. 376	60, 130
Ormerod <i>v.</i> Chadwicke, 16 M. & W. 367	129
Ornamental Woodwork Co. <i>v.</i> Brown, 2 H. & C. 69	116
Osgood <i>v.</i> Breed, 12 Mass. 525	177
Owen <i>v.</i> Burnett, 2 Cr. & M. 353	282
Owens <i>v.</i> Woosman, L. R. 3 Q. B. 469 ; 9 B. & S. 243	50
 PADDON <i>v.</i> Bartlett, 3 A. & E. at p. 896	 111, 155
Page <i>v.</i> Pearce, 8 M. & W. 677	132
Paget <i>v.</i> Foley, 2 Bing. N. C. 679	315
Paine, Re, 8 B. & S. 319	262
Palmer's case, 1 Leach C. C. 355	260
Palmer <i>v.</i> Grand Junction Ry. Co., 4 M. & W. 749	92
——— <i>v.</i> Richards, 6 Ex. 335	195
——— <i>v.</i> Rouse, 3 H. & N. 505	129
Panter <i>v.</i> Att.-Gen., 6 Bro. P. C. 486	154
Pardo <i>v.</i> Bingham, L. R. 4 Ch. 735	164
Parker <i>v.</i> G. W. Ry. Co., 7 M. & G. 253 ; 7 Scott N. R. 870	222
——— <i>v.</i> Taswell, 2 De Gex & Jones, 559, 570	212
Parry <i>v.</i> Croydon Gas Co., 11 C. B. N. S. 579 ; 15 C. B. N. S. 568	313
Parsons <i>v.</i> Tinling, L. R. 2 C. P. D. 119	339
Partington, Ex parte, 6 Q. B. 649, 653	302
——— <i>v.</i> Att.-Gen., L. R. 4 H. L. 122	248
Parton <i>v.</i> Williams, 2 B. & Ald. 330	89
Partridge <i>v.</i> Elkington, L. R. 6 Q. B. 82	91
——— <i>v.</i> Strange, Plowd. 77, 86, 88	128, 259
——— <i>v.</i> Woodman, 1 B. & C. 12	88

Pat—Pos.	PAGE
Patrick <i>v.</i> Stubbs, 9 M. & W. 830	215
Patterson <i>v.</i> Winn, 11 Wheaton, 385, 386 . . .	261
Payne <i>v.</i> Mayor of Brecon, 3 H. & N. 572 . . .	86
Peake <i>v.</i> Screech, 7 Q. B. 603	188
Pearse <i>v.</i> Morrice, 2 A. & E. at p. 96	206
Pearson, Ex parte, L. R. 8 Ch. 667, 672	234
Peate <i>v.</i> Dicken, 1 C. M. & R. 422	182
Penrose <i>v.</i> Martyr, E. B. & E. 499	234
People <i>v.</i> Allen, 6 Wendell, 486	208
—— <i>v.</i> Hadden, 2 Denio, 220	244
—— <i>v.</i> Tibbetts, 4 Cowen, 384, 392	166
—— <i>v.</i> Utica Insurance Co., 15 Johns., at pp. 381, 390	101, 278
Perkins <i>v.</i> Sewell, 1 W. Bl., at p. 659	278
Perry <i>v.</i> Skinner, 2 M. & W. 476	112
Pharmaceutical Society <i>v.</i> London Supply Associa- tion, L. R. 4 Q. B. D. 313	131
Phelan <i>v.</i> Johnson, 7 Ir. Law Rep., at p. 535 . .	18
Phillips <i>v.</i> Eyre, L. R. 4 Q. B. 525, 6 Q. B. 1 . .	157
Phillpotts <i>v.</i> Phillpotts, 10 C. B. 85	86
Pickering <i>v.</i> James, L. R. 8 C. P. 489	72
Pierce <i>v.</i> Hopper, 1 Strange, at p. 260	244
Pierpoint <i>v.</i> Cartwright, L. R. 5 C. P. D. 139 . .	139
Pilkington <i>v.</i> Cooke, 16 M. & W. 615	320
—— <i>v.</i> Riley, 3 Ex. 739	221
Pinhorn <i>v.</i> Souster, 8 Ex. 138, 142	158
Piper <i>v.</i> Whalley, 6 B & S. 303	138
Pitman <i>v.</i> Maddox, 2 Salk. 690	54
Platt <i>v.</i> Sheriffs of London, Plowd. 36	216, 233
Plummer <i>v.</i> Whichcot, T. Jones, 62	216
Pochin <i>v.</i> Duncombe, 1 H. & N. 856	146
Pocock <i>v.</i> Pickering, 18 Q. B. 789, 797	103
Poland, Re, L. R. 1 Ch. 356, 358	176
Pond <i>v.</i> Negus, 3 Mass. 230	208
Ponsford <i>v.</i> Walton, L. R. 3 C. P. 167	212
Poplar Board of Works <i>v.</i> Knight, E. B. & E. 408	130
Postmaster-General, Ex parte, Re Bonham, L. R. 10 Ch. D. 595	39
—— <i>v.</i> Early, 12 Wheaton, 148	16

Pou—R.	PAGE
Poulsum <i>v.</i> Thirst, L. R. 2 C. P. 449	91
Pound <i>v.</i> Plumstead Board of Works, L. R. 7 Q. B. 194	300
Powle <i>v.</i> Gandy, 7 C. B. N. S. 556	319
Powlter's Case, 11 Rep., at pp. 33b, 34b	258, 273
Pratt <i>v.</i> Hillman, 4 B. & C. 269	92
Pretty <i>v.</i> Solly, 26 Beav. 610	292
Prew <i>v.</i> Squire, 10 C. B. 916	153
Prices of Wine, Hobart, 215	271, 342
Prideaux, Ex parte, 3 Myl. & Cr. 327	138
Priestley <i>v.</i> Foulds, 2 M. & G. 194	222
Prince's, The, Case, 8 Rep. 28a	11, 221
Prince <i>v.</i> U. S., 2 Gallison, 204	159
Privilege of Priests, 12 Rep. 100	70
Purnell <i>v.</i> Wolverhampton Waterworks, 10 C. B. N. S. 576	338
 QUIN <i>v.</i> O'Keeffe, 10 Ir. C. L. R. Q. B. 393	 113
 R. <i>v.</i> Abbot, 2 Dougl., at p. 555.	 43
— <i>v.</i> Adamson, L. R. 1 Q. B. D. 201.	200
— <i>v.</i> Allen, L. R. 1 C. C. R., at p. 371	136
— <i>v.</i> —, 15 East. 333	38
— <i>v.</i> Arkwright, 12 Q. B. 960	139
— <i>v.</i> Armagh, Abp. of, 8 Mod., at p. 8	41, 174
— <i>v.</i> Athos, 8 Mod., at p. 144	278
— <i>v.</i> Avery, 18 Q. B. 576	123
— <i>v.</i> Badcock, 6 Q. B. 797	187
— <i>v.</i> Baines, 12 A. & E., at p. 227	306
— <i>v.</i> Bakewell, 7 E. & B. 848	10
— <i>v.</i> Banbury, Inh., 1 A. & E., at p. 142	112
— <i>v.</i> Barham, 8 B. & C. 99, 104	244
— <i>v.</i> Barlow, 2 Salk. 609	196
— <i>v.</i> Barton, Inh., 11 A. & E. 343	132
— <i>v.</i> Beadle, 7 E. & B. 492	39
— <i>v.</i> Beaumont, 26 L. T. N. S. 587	64

R.	PAGE
R. <i>v.</i> Bellamy, 1 B. & C., at p. 506 . . .	248
— <i>v.</i> Berchet, 1 Show., at p. 108 . . .	118
— <i>v.</i> Berenger, 3 M. & S. 67, 69 . . .	15
— <i>v.</i> Berkeley, 1 Kenyon, 80 . . .	43
— <i>v.</i> Berkshire, JJ., L. R. 4 Q. B. D. 469 . . .	132, 133
— <i>v.</i> Birmingham, 8 B. & C. 29. . . .	86
— <i>v.</i> ——— Canal Co., 8 B. & Ald. 570, 579 . . .	48
— <i>v.</i> Bond, 1 B. & Ald., at p. 392 . . .	247
— <i>v.</i> Boteler, 4 B. & S. 959 . . .	200
— <i>v.</i> Boulton, 4 A. & E. 498 . . .	38
— <i>v.</i> Boyall, 2 Burr. 832 . . .	75
— <i>v.</i> Bradford Navigation Co., 6 B. & S. 647, 8, 9 . . .	53
— <i>v.</i> Brecon, 15 Q. B. 813 . . .	343
— <i>v.</i> Brighthelmstone, 4 E. & B. 236 . . .	274
— <i>v.</i> Bristol Dock Co., 6 B. & C., at pp. 191, 192 . . .	190
— <i>v.</i> Buchanan, 8 Q. B. 883 . . .	77
— <i>v.</i> Buck, 2 Strange, 679 . . .	72
— <i>v.</i> Buggs, Skinner, at p. 429 . . .	220
— <i>v.</i> Buttle, L. R. 1 C. C. R., at p. 252 . . .	21
— <i>v.</i> Caledonian Ry. Co., 16 Q. B. 19, 25, 31 . . .	106, 199
— <i>v.</i> Cambridgeshire, JJ., 7 A. & E. 480—491 . . .	296, 297
— <i>v.</i> ———, 4 A. & E., 111, 119 . . .	191
— <i>v.</i> Canterbury, Abp. of, 11 Q. B. 579 . . .	110, 126, 254, 274
— <i>v.</i> Capel, 12 A. & E. 382, 411 . . .	106
— <i>v.</i> Carlile, 3 B. & Ald. 161 . . .	75
— <i>v.</i> Cator, 4 Burr. 2026 . . .	323
— <i>v.</i> Chadwick, 11 Q. B. 238 . . .	27
— <i>v.</i> Champneys, L. R. 6 C. P. 384 . . .	336
— <i>v.</i> Chichester, Bp. of, 2 E. & E. 209—226 ; 29 L. J. Q. B. 23 . . .	202
— <i>v.</i> Christchurch, Inh., 12 Q. B. 149 . . .	163
— <i>v.</i> Cleworth, 4 B. & S. 927 . . .	182
— <i>v.</i> Collingwood, 12 Q. B. 681 . . .	237
— <i>v.</i> Combe, 13 Q. B. 179 . . .	110
— <i>v.</i> Cook, 3 T. R. 519 . . .	37
— <i>v.</i> Cottle, 16 Q. B. 412 . . .	122
— <i>v.</i> Cousins, 4 B. & S. 849 . . .	58
— <i>v.</i> Cumberland, Inh., 6 T. R. 194 ; 3 B. & P. 354 . . .	38, 135

R.	PAGE
R. v. Cutbush, L. R. 2 Q. B. 379	262
— v. Davies, 5 T. R. 626	38
— v. Davis, L. R., 1 C. C. R. 272	54
— v. ——— 1 Leach, C. C. 271	323
— v. ——— Sayer, 163	76
— v. Dean, 12 M. & W. 43	254
— v. Delahunt, Arm. Mac. & O'G. 255	156
— v. Denbighshire, JJ., 4 East, 142	207
— v. Denton, 18 Q. B. 761	348
— v. Derby, Inh., Skinner, 370	196
— v. Ditchet, Inh., 9 B. & C., at p. 186	112
— v. Doubleday, 3 E. & E. 501	186
— v. Dove, 3 B. & Ald. 596	267
— v. Downshire, Marquis, 4 A. & E. 714	21
— v. Dursley, Inh., 3 B. & Ad. 465	165
— v. East Ardsley, 14 Q. B. 801	121
— v. East Teignmouth, 1 B. & Ad., at p. 249	264
— v. Eastern Counties Ry. Co., 2 Q. B. 361, 362	188
— v. Edmundson, 2 E. & E. 77—82	185
— v. Ellis, 6 Q. B. 501	58
— v. Epsom, 4 E. & B. 1003	306
— v. Essex, JJ., 1 B. & Ald. 210	133
— v. Everdon, Inh., 9 East, 101, 105.	153
— v. Fell, 1 B. & Ad. 380	44
— v. Fordham, L. R. 8 Q. B. 501	140
— v. ———, Inh. 11 A. & E. 73	192
— v. Fornecett St. Mary, 12 Q. B. 160	265
— v. Frost, Gurney's Rep. & 9 C. & P. 129	145, 215
— v. Fylingdales, Inh. 7 B. & C. 440	57
— v. Gardner, 6 A. & E. 118	215
— v. Glamorganshire Canal Co., 3 E. & E. 200	103
— v. Glastonby, Cases temp. Hardw. at p. 357	232
— v. Gravesend, 3 B. & Ad. 240	80
— v. Great Bentley, 10 B. & C. at p. 526	22
— v. Great Bolton, 8 B. & C. at p. 74	21
— v. Great Driffield, Inh., 8 B. & C. at p. 690	149, 151
— v. Great Western Ry. Co., 1 E. & B. 253, 874	203
— v. Greene, 6 A. & E. 548	14
— v. Gregory, 5 B. & Ad. 555	76

R.	PAGE
R. v. Gwenop, Inh. 3 T. R. 133	189
— v. Hall, 1 B. & C. 123	137, 182
— v. Handy, 6 T. R. at p. 288	168
— v. Harrington, Inh. 4 A. & E. 618, 20	54
— v. Harris, 4 T. R. 202, 205	70, 76
— v. Harvey, 1 Wils. 164	243, 249
— v. ———, L. R. 1 C. C. R. 284	254, 305
— v. Harwich, Mayor, 8 A. & E. 919	198
— v. Hastings, Mayor, 1 D. & R. 53	196
— v. Haughton, 1 E. & B. 501, 516	14
— v. Hawkeswood, 1 Leach, 257; 2 East, P. C. 955	212
— v. Hellier, 17 Q. B. 229, 236	312
— v. Hertford College, L. R. 3 Q. B. D. at p. 707	105
— v. Hicks, 4 E. & B. 633, 643	220
— v. Hipswell, 8 B. & C. 466	80
— v. Hodnett, Inh. 1 T. R. 96, 101	139, 255
— v. Hogg, 1 T. R. 721	146, 147
— v. Humphery, 10 A. & E. 337, 370	139
— v. Ide, Inh. 2 B. & Ad. 866, 9	250
— v. Idle, Inh. 2 B. & Ald. 149	333
— v. Ingall, L. R. 2 Q. B. D. 199	207
— v. Ipswich Union, L. R. 2 Q. B. D. 269	158
— v. Jackson, 1 Cowp. 297	325
— v. Jeffries, 1 Strange, 446	12
— v. Johnson, 6 Cl. & Fin. 41	225
— v. ———, 8 Q. B. 102	253
— v. Jukes, 8 T. R. at p. 544	43
— v. Kent, 2 Q. B. at p. 692	136
— v. Kershaw, 6 E. & B. at p. 1007; 26 L. J. M. C. at p. 23	299
— v. Knapp, 2 E. & B. 447	122
— v. Lambe, 5 T. R. 76	134
— v. Lancaster, 10 Q. B. 962	151
— v. Lancashire & Yorkshire Ry. Co., 1 E. & B. 328	203
— v. Land Tax Commissioners, 2 E. & B. 694, 716. . . .	153
— v. Latimer, 15 Q. B. 1077	103
— v. Leatham, 3 E. & E. 669	113

R.	PAGE
R. v. Leeds & Bradford Ry. Co., 18 Q. B. 343 . . .	163
— v. Leeds, Mayor of, 11 A. & E. 512 . . .	227
— v. Leek Wootton, 16 East, at p. 122 . . .	148
— v. Leicester, J.J., 7 B. & C. 12 . . .	207
— v. ———, 15 Q. B. 88 . . .	36
— v. Lichfield, Mayor of, 2 Q. B. 693 . . .	182
— v. London Dock Co., 5 A. & E. at p. 175 . . .	107
— v. London, Mayor of, 13 Q. B. 1—33 . . .	225
— v. ———, 9 B. & C. at p. 27, 30 . . .	29, 42
— v. ———, L. R. 2 Q. B. at pp. 295, 296 . . .	261
— v. Longmead, 2 Leach, C. C. 694 . . .	121
— v. Lovibond, 24 L. T. N. S. 357 . . .	73
— v. Loxdale, 1 Burr, 447 . . .	260, 345
— v. Luffe, 8 East, 193 . . .	237
— v. Mabe, Inh. 3 A. & E. 531 . . .	105
— v. McCann, L. R. 3 Q. B. 145 . . .	37
— v. McKenzie, R. & R. 429 . . .	348
— v. Malland, 2 Strange, 828 . . .	73
— v. Mallow Union, 12 Ir. C. L. R. (Q. B.) 35 . . .	48, 245, 275
— v. M. S. & L. Ry. Co., 4 E. & B. 88 . . .	175
— v. Manchester & Salford Waterworks Co., 1 B. & C. 630 . . .	180
— v. Marks, 3 East, 157 . . .	279, 280
— v. Marriot, 4 Mod. 144 . . .	73
— v. Mason, 2 T. R. at p. 586 . . .	262
— v. Mawgan, 8 A. & E. 496 . . .	348
— v. Merionethshire, Inh. 6 Q. B. 343 . . .	343
— v. Metropolitan Commissioners of Sewers, 1 E. & B. 694, 701 . . .	113
— v. Middlesex, J., 2 B. & Ad. 818 . . .	315
— v. Milverton, 5 A. & E. 841, 845, 854 . . .	294
— v. Moah, Dears. C. C. 639 . . .	263
— v. Monck, L. R. 2 Q. B. D. 552, 553, 555 . . .	6, 153
— v. Moreley, 2 Burr. 1041 . . .	43
— v. Morris, L. R. 1 C. C. R. at p. 95 . . .	107
— v. Mosley, 2 B. & C. 226 . . .	180
— v. Neath, Overseers, L. R. 6 Q. B. 707 . . .	181
— v. Nene, 9 B. & C. 875 . . .	180
— v. Nevill, 8 Q. B. 452—465 . . .	180

TABLE OF CASES.

li

R.	PAGE
R. v. Newark, Inh., 3 B. & C. 63, 71, 81 . . .	290, 303
— v. Norfolk, J., 4 B. & Ad. at p. 238 . . .	195
— v. Northleach & Witney Trustees, 5 B. & Ad. 978	311
— v. Norwich v. Watton Road Trustees, 5 A. & E. 563	252
— v. Norwich, Mayor, 1 B. & Ad. 310 . . .	207
— v. Oldham, Mayor of, L. R. 3 Q. B. 475 . . .	19
— v. Owen, 15 Q. B. 476	140
— v. Oxford, Bishop of, L. R. 4 Q. B. D. at p. 261, 525	118, 196, 203
— v. Oxford, Vice-Chancellor of, L. R. 7 Q. B. 471 . . .	138
— v. Palmer, 1 Leach. C. C. 352, 355 . . .	111
— v. Patteson, 4 B. & Ad. 9	210
— v. Paty, 2 W. Bl. 721	132
— v. Pawlyn, 1 Sid. 208, 209	70, 220
— v. Payne, L. R. 1 C. C. R. 27	185
— v. Paynter, 13 Q. B. 399	188
— v. Pearce, L. R. 5 Q. B. D. at p. 389 . . .	298
— v. Pease, 4 B. & Ad. 30, 41	112
— v. Pembridge, Inh., 3 Q. B. 901	133
— v. Percy, L. R. 9 Q. B. 64	174, 284
— v. Pierce, 3 M. & S. 61, 66	278, 280
— v. Pilkington, 2 E. & B. 546	237
— v. Pinder, 24 L. J. Q. B. 148	307
— v. Pinney, 2 B. & C. 322	327
— v. Plowright, 3 Mod. 95	43
— v. Poor Law Commissioners, 6 A. & E. 1, 7, 68—69	113, 116
— v. Price, 11 A. & E. 727	70
— v. Pugh, 6 Mod. 141	326
— v. ——— 1 Dougl. 188	226
— v. Ramsgate, Inh., 6 B. & C. at p. 715 . . .	117
— v. Robinson, 12 A. & E. 672	133
— v. ——— 2 Burr. at p. 805	70, 75
— v. Rochester, Mayor, 7 E. & B. 910 . . .	207
— v. Rogers, 10 East, 569	270
— v. Russell, 13 Q. B. 237	306
— v. Sadi, 1 Leach, C. C. 468	50

R.	PAGE
R. v. Sainsbury, 4 T. R. at p. 457	69
— v. St. Edmunds, Salisbury, 2 Q. B. 72	330
— v. St. George, Southwark, 10 Q. B. 852, 863	292
— v. St. Gregory, Inh., 2 A. & E. 99	212
— v. St. James, Westminster, 2 A. & E. 241	51
— v. St. Luke's, Chelsea, L. R. 6 Q. B. 572, 7 Q. B. 148	52, 231
— v. St. Mary, Whitechapel, 12 Q. B. 120, 127	163
— v. St. Nicholas, Ipswich, Burr. S. C. 91	211
— v. ——— Rochester, Inh., 5 B. & Ad. at p. 226	138
— v. Seale, 5 E. & B. 1	171
— v. Sedgley, 2 B. & Ad. 65	147
— v. Shavington, 17 Q. B. 48	127
— v. Shrewsbury, 3 B. & Ad. 216	187
— v. Silvester, 33 L. J. M. C. 79	182
— v. Skeen, Bell's C. C. at p. 115, 116	3, 117, 129, 153
— v. Sleep, L. & C. 44 ; 30 L. J. M. C. 171	254
— v. Smith (Jesse), L. R. 1 C. C. R. 266	167, 253
— v. ——— L. & C. 131	343
— v. ——— 2 Doug. 441	70
— v. ——— L. R. 8 Q. B. 146	343
— v. Somersetshire, J.J., 4 B. & Ad. 549	159
— v. South Weald, 5 B. & S. 405	205
— v. Sparrow, 2 Strange, 1123	207
— v. Spratley, 6 E. & B. 367	185
— v. Staffordshire, 12 East, at p. 577	24
— v. Stock, 8 A. & E. 405	43
— v. Stoke Damerel, 7 B. & C. 563	59
— v. Sudbury Burial Board, E. B. & E. 264	298
— v. Suffolk, J.J., 2 Q. B. 85	330
— v. Sugden, 1 Ir. Jur. O. S. (Ex. Ch.) 58	121
— v. Surrey, J.J., 2 T. R. 504	43
— v. Sutton, 4 M. & S. 532	15
— v. Swiney, 1 Alcock & Napier, 131, 132	269
— v. Taunton, St. James, 9 B. & C. 831, 836, 837 153, 263, 301	
— v. Thames and Isis Navigation Co., 5 A. & E. at p. 816	105

R.	PAGE
R. v. Threlkeld, Inh., 4 B. & Ad. at pp. 235, 236	290, 303
— v. Tithe Commissioners, 14 Q. B. 459, 474	198
— v. Toms, 1 Dougl. at p. 406	222
— v. Tuchin, 2 Ld. Raym. 1066	38
— v. Upper Papworth, 2 East, 413	133
— v. Vandeleer, 1 Str. 69	53
— v. Vine, L. R. 10 Q. B. 195	164
— v. Walcot, Overseers, 2 B. & S. 568	7
— v. Walford, 9 Q. B. 626	13
— v. Walker, L. R. 10 Q. B. 355	70
— v. Wallis, 5 T. R. 375	182
— v. Warwick, Council of, 8 Q. B. 929	237
— v. Washbrook, Inh., 4 B. & C. 732	58
— v. West Riding, J.J., 1 Q. B. 325	118
— v. ————— 10 Q. B. 763	168
— v. ————— L. R. 1 Q. B. D. 220	344
— v. Whissendine, Inh., 2 Q. B. 454, 455	116
— v. Whittaker, 2 C. & K. 640	106
— v. White, L. R. 2 Q. B. 557, 563	186
— v. Whiteley, 3 H. & N. 143	313
— v. Willcock, 7 Q. B. 317	121
— v. Williams, 2 C. & K. 1001	195
— v. ————— 1 W. Bl. 95	238, 273
— v. Winstanley, 1 Cr. & J. at p. 444	122
— v. Wood, L. R. 4 Q. B. 559	141
— v. Woodrow, 15 M. & W. 404	254
— v. Woolstanton, 1 Bott. & Const. 707	212
— v. Worcestershire, J.J., 5 M. & S. 457	311
— v. Worksop Local Board, 5 B. & S. 951	59, 211
— v. Wright, 1 A. & E. 437—441	41
— v. ————— 1 Burr. at p. 544	74, 76
— v. Wycombe Ry. Co., L. R. 2 Q. B. at pp. 321, 322	106
— v. York, Archbishop of, Willes, 533	38
— v. York, J.J., 1 A. & E. at p. 834	232
— v. York and North Midland Ry. Co., 1 E. & B. 178, 858	203
— v. Yorkshire, East Riding, J.J., 1 Dougl. 192	133

R—Roo.	PAGE
R. v. Younger, 5 T. R. 449	149
Radnorshire County Roads Board v. Evans, 3 B. & S. 400	180
Ralston v. Hamilton, 4 Macq. at p. 408	45
Ramsden v. Gibbs, 1 B. & C. 319, 324	254
—— v. Lupton, L. R. 9 Q. B. 17, 32, 33	68
Randolph v. Milman, L. R. 4 C. P. 107—116	48
Ranson v. Dundas, 3 Bing. N. C. 556, 568, 569	56
Rashleigh, Ex parte, L. R. 2 Ch. D. 9	155
Rathbone v. Munn, 9 B. & S. 712, 713	166
Rawson v. Bargue, Styles, 81	128
Redmond v. Smith, 7 M. & G. 457	86
Redpath v. Allen, L. R. 4 P. C. at p. 517	52
Reed v. Coker, 13 C. B. 850	98
—— v. Cowmeadow, 6 A. & E. 661	95
—— v. Ingham, 3 E. & B. 889	184, 245
Reeves v. Watts, L. R. 1 Q. B. 412	29
—— v. White, 17 Q. B. 995	46
Rein v. Lane, 8 B. & S. 90	117, 137
Reniger v. Fogassa, Plowd. 13, 18	128, 135
Restall v. L. & S. W. Ry. Co., L. R. 3 Ex. 141	349
Rhodes v. Smethurst, 4 M. & W. at p. 63	116
Richards v. Dyke, 3 Q. B. 256, 268, 269	47, 75
—— v. Easto, 15 M. & W. 244	219, 220
Richardson's case, 2 Story, 571	157
Richter v. Hughes, 2 B. & C. 499	61
Ridge v. Garlick, 8 Taunt. 424	341
Riley v. Crossley, 2 C. B. 146	230
Ritchie v. Smith, 6 C. B. 462	82, 85
Rix v. Borton, 12 A. & E. 470	312
Roberts v. Orchard, 2 H. & C. 769 ; 33 L. J. Ex. 65	94, 97, 98
Robinson v. Emerson, 4 H. & C. 352	320
—— v. Vale, 2 B. & C. 762	125
Roe d. Pellatt v. Ferrars, 2 B. & P. at p. 547	232
Rogers v. Kingston, 2 Bing. 441	66
Roles v. Rosewell, 5 T. R. 528	199
Roosevelt v. Maxwell, 3 Blatchf. C. C. R. 391	17

Ros—Sha.

PAGE

Rosse, Earl, <i>v.</i> Wainman, 14 M. & W. 859; 2 Ex. 800	126
Rosseter <i>v.</i> Cahlmann, 8 Ex. 361	34
Routledge <i>v.</i> Low, L. R. 3 H. L. 100	33
Rowning <i>v.</i> Goodchild, 2 W. Bl. at p. 910	75
Ruckmabhoye <i>v.</i> Lulloobhoy Mottichund, 8 Moore, P. C. 4	125
Rudd <i>v.</i> Scott, 2 Scott, N. R. 631	95
Ruddy, in the goods of, L. R. 2 P. & D. at p. 331	237
Rusby <i>v.</i> Newson, L. R. 10 Ex. at p. 329	152
Russell <i>v.</i> Ledsam, 14 M. & W. 589	9
Ruther <i>v.</i> Harris, L. R. 1 Ex. D. 97, 100	131, 134
Ryall <i>v.</i> Rolle, 1 Atk. 174	288
— <i>v.</i> Rowles, 1 Ves. Sen. 348	288

ST. LEONARD'S, SHOREDITCH, *v.* Franklin, L. R. 3

C. P. D. 377	131
St. Pancras <i>v.</i> Battersbury, 2 C. B. N. S. 477	73
— <i>v.</i> Clapham, 2 E. & E. 742	138
St. Paul's, Warden of, <i>v.</i> The Dean, 4 Price, 65, 79	184
St. Sepulchre, Ex parte, 4 De G. J. & S. at p. 242; 33 L. J. Ch. at p. 376	340
Salkeld <i>v.</i> Johnston, 2 C. B. 756, 757; 2 Ex. 282, 283; 1 Hare, 169; 1 McN. & G. 242	106, 272, 286, 287
Saltoun, Lord, <i>v.</i> Adv.-Gen., 3 Macq. 659	123
Samuel <i>v.</i> Nettleship, 3 Q. B. at p. 192	103
Sandiman <i>v.</i> Breach, 7 B. & C. 96	182
Sayer <i>v.</i> Dicey, 3 Wils. 60	83
Scales <i>v.</i> Pickering, 4 Bing. 448	245, 252
Scott <i>v.</i> Berkeley, 3 C. B. 929—937	14
— <i>v.</i> Legg, L. R. 2 Ex. D. at p. 42	6
Selmes <i>v.</i> Judge, L. R. 6 Q. B. 724	90
Sewell <i>v.</i> Taylor, 7 C. B. N. S. 160	130
Shaftesbury, Earl, <i>v.</i> Russell, 1 B. & C. 666	45
Sharp <i>v.</i> Dawes, L. R. 2 Q. B. D. 26	127
— <i>v.</i> Warren, 6 Price, 131	76
Shatwell <i>v.</i> Hall, 10 M. & W. 523	93

Sha—Sol.	PAGE
Shaw <i>v.</i> Ruddin, 9 Ir. C. L. R. 214 . . .	48, 245, 275
Sheffield Waterworks Co. <i>v.</i> Bennett, L. R. 7 Ex. 409, 8 Ex. 196	130
Shepherd <i>v.</i> Hills, 11 Ex. 67	71
——— <i>v.</i> Sharp, 1 H. & N. 115	220
Sheppard <i>v.</i> Gosnold, Vaughan, at pp. 169, 170 .	144, 147
Shipman <i>v.</i> Henbest, 4 T. R. 109	42
Short <i>v.</i> Hubbard, 2 Bing. 349	291
Shrewsbury, Earl of, <i>v.</i> Beazley, 19 C. B. N. S. 681	283
——— <i>v.</i> Scott, 6 C. B. N. S. 159, 160 . . . 14, 15, 24, 224, 347	
——— Peerage, 7 H. C. 1	15
Shuttleworth's case, 9 Q. B. 651	210
——— <i>v.</i> Le Fleming, 19 C. B. N. S. 687, 703	238, 291
Sickles <i>v.</i> Sharp, 13 Johnson, 498	233
Simpson <i>v.</i> Blues, L. R. 7 C. P. 290	179
——— <i>v.</i> Ready, 12 M. & W. 740	305
——— <i>v.</i> Unwin, 3 B. & Ad. 134	253
Simson <i>v.</i> Moss, 2 B. & Ad. 543	177
Slade <i>v.</i> Drake, Hob. 298	228
Smale <i>v.</i> Burr, L. R. 8 C. P. 64	68
Smart <i>v.</i> Nokes, 6 M. & G. 911	212
Smeeton <i>v.</i> Collier, 1 Ex. 457	50
Smith <i>v.</i> Bell, 2 Railw. Cas. 877, 10 M. & W. 378	115
—— <i>v.</i> Brown, L. R. 6 Q. B. 729	178
—— <i>v.</i> Coffin, 2 H. Bl. 463	234
—— <i>v.</i> Goldsworthy, 4 Q. B. 466	29
—— <i>v.</i> Hopper, 9 Q. B. 1005	95
—— <i>v.</i> Lindo, 4 C. B. N. S. 395; 5 C. B. N. S. 587	82
—— <i>v.</i> Mawhood, 14 M. & W. 452	84
—— <i>v.</i> Shaw, 10 B. & C. 277, 284	92
—— <i>v.</i> Wiltshire, 2 Brod. & B. 619; 5 Moore, 322	89
Smithett <i>v.</i> Blythe, 1 B. & Ad. 509	303
Snelgrove <i>v.</i> Smart, 12 M. & W. 135	312
Snow <i>v.</i> Phillips, Sid. 220	178
Soldier's, The, case, Cro. Car. 71	258

Sou—Str.	PAGE
Southampton Bridge Co. <i>v.</i> Local Board of South-	
ampton, 8 E. & B. at p. 804 . . .	44
———— Dock Co. <i>v.</i> Richards, 1 M. & G. 448	211
Spackman, <i>Ex parte</i> , 1 M. N. & G. 170 . . .	181
Springfield, <i>Inh.</i> , <i>v.</i> Connecticut River Road Co.,	
4 Cush. 63	48
Squire, <i>Ex parte</i> , L. R. 4 Ch. 47	212
Stacey <i>v.</i> Lintell, L. R. 4 Q. B. D. 291 . . .	237
Staines <i>v.</i> Wainwright, 6 Bing. N. C. 174 . . .	66
Standen <i>v.</i> University of Oxford, Sir W. Jones, 17	292
Staner, <i>Ex parte</i> , 2 De G. M. & G. 263 . . .	162
Staniland <i>v.</i> Hopkins, 9 M. & W. 192 . . .	189
Stanley <i>v.</i> Wharton, 9 Price, 301	234
Stansfeld <i>v.</i> Cubitt, 2 De G. & J. 222 . . .	328
Stead <i>v.</i> Carey, 1 C. B. 516, 522	25, 30, 224
Steamship Co. <i>v.</i> Joliffe, 2 Wallace, 450 . . .	349
Steavenson <i>v.</i> Oliver, 8 M. & W. 234—243 . . .	270
Steele <i>v.</i> North Met. Ry. Co., L. R. 2 Ch. 237 . . .	31
Stephens <i>v.</i> McCargo, 9 Wheaton, 902	269
———— <i>v.</i> Robinson, 2 Cr. & J. 209	82
———— <i>v.</i> Watson, 1 Salk. 45	73
Stephenson <i>v.</i> Higginson, 3 H. L. C. 686	248
Stevens <i>v.</i> Duckworth, Hardres, at p. 344 . . .	115
———— <i>v.</i> Evans, 2 Burr. at p. 1157	73
———— <i>v.</i> Gourley, 7 C. B. N. S. 99	82
———— <i>v.</i> Jeacocke, 11 Q. B. 731	73
Steward <i>v.</i> Greaves, 10 M. & W. 719	112, 199
Stockdale <i>v.</i> Hansard, 9 A. & E. 1	11
Stockton, &c., Ry. Co. <i>v.</i> Barrett, 11 Cl. & Fin. 590	245
———— <i>v.</i> Leeds Ry. Co., 2 Ph. 670	31
Stokes <i>v.</i> Salomons, 9 Hare, at p. 79	30
Stoughton <i>v.</i> Baker, 4 Mass. 522, 528	37
Stourbridge Canal Co. <i>v.</i> Wheeley, 2 B. & Ad. 792	223
Stowel <i>v.</i> Zouch, Plowd. 365, 366, 369	100, 111, 177,
	277
Stracey <i>v.</i> Nelson, 12 M. & W. 535 ; 13 L. J. Ex.	
97	191
Stradling <i>v.</i> Morgan, Plowd. 204, 205, 206	101, 172, 228,
	261

Str—Tid.	PAGE
<i>Strother v. Hutchinson</i> , 4 Bing. N. C. 83 . . .	216
<i>Sturla v. Freccia</i> , L. R. 12 Ch. D. at p. 432 . . .	15
<i>Supervisors v. U. S.</i> , 4 Wallace, 435 . . .	201
<i>Surtees v. Ellison</i> , 9 B. & C. 752 . . .	7, 344
<i>Sussex Peerage</i> , 11 Cl. & Fin. 143 . . .	100, 111
<i>Swan v. Blair</i> , 3 Cl. & Fin. 632, 633 . . .	84
<i>Swansea Canal Proprietors v. Great Western R. Co.</i> , L. R. 5 Eq. 444 . . .	64
<i>Swanton v. Goold</i> , 9 Ir. C. L. R. Q. B. 234. . .	107
<i>Swinford v. Keble</i> , 7 B. & S. 587 . . .	21
<i>Sylph, The</i> , L. R. 2 A. & E. 24 . . .	178
<i>TAWNEY v. Lynn and Ely Ry. Co.</i> , 16 L. J. Ch. 282 . . .	222
<i>Taylor, Re</i> , 10 Sim. 291 . . .	51
——— <i>v. Chichester and Midhurst Ry. Co.</i> , L. R. 2 Ex. 356, 373 . . .	60
——— <i>v. Crowland Gas Co.</i> , 10 Ex. 293 . . .	82
——— <i>v. Goodwin</i> , L. R. 4 Q. B. D. 228 . . .	169
——— <i>v. Humphries</i> , 17 C. B. N. S. 539 . . .	305
——— <i>v. Parry</i> , 1 M. & G. 619 . . .	15
——— <i>v. Taylor</i> , L. R. 1 Ch. D., at p. 431 . . .	56
——— <i>v. U. S.</i> , 3 Howard, 197 . . .	235
<i>Teale v. Younge</i> , M'Clel. & Y. 497 . . .	122
<i>Tennant v. Bell</i> , 9 Q. B. 684 . . .	132
——— <i>v. Cranston</i> , 8 Q. B. 707 . . .	325
<i>Terrington v. Hargreaves</i> , 5 Bing. 489 . . .	165
<i>Thames Conservators v. Hall</i> , L. R. 3 C. P. 415 . . .	334
——— <i>Haven Dock and Ry. Co. v. Rose</i> , 4 M. & G. 552 . . .	211
<i>Theobald v. Crichmore</i> , 1 B. & Ald. 227 . . .	89
<i>Thibault v. Gibson</i> , 12 M. & W. 88 . . .	304
<i>Thompson v. Gibson</i> , 8 M. & W. 281 . . .	132
——— <i>v. Harvey</i> , 4 H. & N. 254 . . .	226
——— <i>v. Ward</i> , L. R. 6 C. P., at p. 353 . . .	231
<i>Thomson v. Adv.-Gen.</i> , 12 Cl. & Fin. 1 . . .	33
<i>Thorpe v. Adams</i> , L. R. 6 C. P. 125 . . .	330, 337
——— <i>v. Coleman</i> , 1 C. B. 990 . . .	83
<i>Tidey v. Mollett</i> , 16 C. B. N. S. 298 . . .	212

Tim—Uni.

	PAGE
Timms <i>v.</i> Williams, 3 Q. B. 417, 422 . . .	45, 47
Tinkler <i>v.</i> Wandsworth Board, 2 De G. & J. 261, 274	60
Tisdell <i>v.</i> Combe, 7 A. & E. 788	184
Toby, <i>Re</i> , 12 Q. B. 694	153
Tolson <i>v.</i> Kaye, 3 B. & B. 217	232
Tomkins <i>v.</i> Ashby, 6 B. & C. 542	244
Tomlinson <i>v.</i> Bullock, L. R. 4 Q. B. D. 230 .	154
Towler <i>v.</i> Chatterton, 6 Bing. 258	160
Towns <i>v.</i> Mead, 16 C. B. 123	242
Townsend <i>v.</i> Read, 10 C. B. N. S. 308, 30 L. J. M. C. 245	130
Trueman <i>v.</i> Lambert, 4 M. & S. 238	278
Truscott <i>v.</i> Merchant Taylors' Co., 11 Ex. 855 .	29
Turner <i>v.</i> Sheffield and Rotherham Ry. Co., 10 M. & W. 434	112
Turtle <i>v.</i> Hartwell, 6 T. R. 429	235, 236
Twenty-eight Cases containing Wine, 2 Benedict, 63.	235
Two Hundred Chests of Tea, 9 Wheaton, at p. 439	124
Twyecross <i>v.</i> Grant, L. R. 2 C. P. D. 469, 530, 531	172
Twyne's Case, 3 Rep., at p. 82a, 1 Sm. L. C., at p. 5	230, 234
Tyson <i>v.</i> Thomas, M'Clel & Younge, 119 . . .	81
UUMPHELBY <i>v.</i> M'Lean, 1 B. & Ald. 42 . . .	91
Underhill <i>v.</i> Ellicombe, M'Clel & Younge, 450 .	73
——— <i>v.</i> Longridge, 29 L. J. M. C. 65 . . .	120
United Society <i>v.</i> Eagle Bank, 7 Conn., at p. 469.	260
United States <i>v.</i> Bassett, 2 Story, 389 . . .	4, 113
——— <i>v.</i> Collier, 3 Blatchf. C. C. R. 325 . . .	261
——— <i>v.</i> Dickson, 15 Peters, 141, 163 . . .	246, 303
——— <i>v.</i> Fisher, 2 Cranch, 386, 399 . . .	114, 152, 275
——— <i>v.</i> Greene, 4 Mason, 427	37
——— <i>v.</i> Hartwell, 6 Wallace, 385	258
——— <i>v.</i> Helen, The, 6 Cranch, 203	269

	PAGE
Uni—Wan.	
United States <i>v.</i> Hewes, Crabbe, 307 . . .	37, 261
— <i>v.</i> Hoare, 2 Mason, 311 . . .	37
— <i>v.</i> Kirby, 7 Wallace, 482 . . .	128
— <i>v.</i> Morris, 14 Peters, 464 . . .	257, 259
— <i>v.</i> Morse, 3 Story, 87 . . .	238
— <i>v.</i> Recorder, Ship, 1 Blatchf. C. C. R. 218 . . .	144, 146
— <i>v.</i> Sharp, Peters, C. C. R. 118 . . .	247
— <i>v.</i> Sheldon, 2 Wheat. 119 . . .	182
— <i>v.</i> Starr, Hempstead, 469 . . .	159
— <i>v.</i> Stern, 5 Blatchf. C. C. R. 512 . . .	121
— <i>v.</i> Ten Cases of Shawls, 2 Paine, 162 . . .	252
— <i>v.</i> Wigglesworth, 2 Story, 369 . . .	245
— <i>v.</i> Williams, 1 Paine, 261 . . .	157
— <i>v.</i> Wiltberger, 5 Wheat., at pp. 95, 96 . . .	257
— <i>v.</i> Winn, 3 Sumner, 209 . . .	257, 259
Urquhart <i>v.</i> Urquhart, 1 Macq., at p. 662 . . .	157
 VALLANCE <i>v.</i> Siddel, 6 A. & E. 932, 2 N. & P. 78 . . .	174
Vansittart <i>v.</i> Taylor, 4 E. & B. 910 . . .	158
Vaux <i>v.</i> Vollans, 4 B. & Ad. 525 . . .	250
Veitch <i>v.</i> Trustees of Exeter Roads, 8 E. & B. 986 . . .	68
Venour's Settled Estates, Re, L. R. 2 Ch. D., at p. 525 . . .	294
Voorhees <i>v.</i> Bank of U. S., 10 Peters, at p. 471 . . .	301
 WAINWRIGHT, Re, 1 Phillips, 258 . . .	119
Walker <i>v.</i> London and Blackwall Ry. Co. 3 Q. B. 744 . . .	222
— <i>v.</i> Richardson, 2 M. & W. 889 . . .	289
Wallace <i>v.</i> Att.-Gen., L. R. 1 Ch. 1 . . .	33
— <i>v.</i> Smith, 5 East, 115 . . .	92
Walsingham's case, Plowd. at p. 565 . . .	302
Wansey <i>v.</i> Perkins, 7 M. & G. at p. 142 . . .	113

War—Wel.	PAGE
Warburton <i>v.</i> Loveland, 1 Hud. & Brooke, 648	111, 113, 117
Ward <i>v.</i> Gray, 6 B. & S. 345	126
— <i>v.</i> Scott, 3 Camp. 284	54, 177
— <i>v.</i> Snell, 1 H. Bl. at p. 13	231
Wards, case out of Court of, Cro. Car. at p. 34	246
Ware <i>v.</i> Grand Junction Waterworks Co., 2 R. & M. 470	31
— <i>v.</i> Regent's Canal Co., 28 L. J. Ch. 153	106
Warne <i>v.</i> Varley, 6 T. R. 443	60
Warren <i>v.</i> Windle, 2 East, 205—212	270
— Manufacturing Co. <i>v.</i> Etna Insurance Co., 2 Paine, 502	156
Warrington, Ex parte, 3 De G. M. & G. 159, 171	328
— <i>v.</i> Furbor, 8 East, 242	244
Warwick <i>v.</i> White, Bunbury, 106	244
Waterford, Earl of, Claim, 6 Cl. & Fin. 172	150
— Railway Co. <i>v.</i> Logan, 14 Q. B. 672, 679, 680	25
Waterhouse <i>v.</i> Keen, 4 B. & C. 200	90, 130
Waterlow <i>v.</i> Dobson, 27 L. J. Q. B. 55	260
Watervliet Turnpike Co. <i>v.</i> M'Kean, 6 Hill, 616	121
Watson <i>v.</i> Martin, 34 L. J. M. C. 50	250
Waugh <i>v.</i> Middleton, 8 Ex. 352	114, 159, 165
Wayman <i>v.</i> Southard, 10 Wheaton, at p. 30	301
Weale <i>v.</i> West Middlesex Waterworks Co., 1 Jac. & Walk. 371	24, 105
Wear Commissioners <i>v.</i> Adamson, L. R. 1 Q. B. D. 546, 554, 2 App. Cas. 764, 765	20, 109, 114, 137, 224
Webb <i>v.</i> Bird, 10 C. B. N. S. 268, 13 C. B. N. S. 841	180
— <i>v.</i> Manchester and Leeds Ry. Co., 4 Myl. & Cr. 116	222
Wedge <i>v.</i> Berkeley, 6 A. & E. 663	88
Welden <i>v.</i> Vesey, Poph. at p. 175	70
Weller <i>v.</i> Toke, 9 East, 364	88
Wilmington's case, 20 Vermont, 653	157
Wells <i>v.</i> Iggulden, 3 B. & C. 186	290, 303
— <i>v.</i> Porter, 2 Bing. N. C. 722, 3 Scott, 141	34

Wes—Wil.	PAGE
West <i>v.</i> Francis, 5 B. & Ald. 737	22
Weston <i>v.</i> Arnold, L. R. 8 Ch. at p. 1089	32
Wetherell <i>v.</i> Jones, 3 B. & Ad. 221	85
Weymouth, Mayor of, <i>v.</i> Nugent, 6 B. & S. 28—35	37
Wharton Peerage, 7 H. L. C. at p. 13.	15
Whatman <i>v.</i> Pearson, L. R. 3 C. P. 422	94
Wheatley <i>v.</i> Lane, 1 Wms. Saund. at pp. 244, 245	241
——— <i>v.</i> Thomas, 1 Lev. at p. 75	29
White <i>v.</i> Boot, 2 T. R. 274.	341
——— <i>v.</i> Feast, L. R. 7 Q. B. 353	171
Whitehead <i>v.</i> Smithers, L. R. 2 C. P. D. 553	23, 324
Whiteley <i>v.</i> Chappell, L. R. 4 Q. B. 147	250
Wigton, Overseers, <i>v.</i> Snaith, Overseers, 16 Q. B. 496	119
Wilcox <i>v.</i> Smith, 4 Drewry, at p. 49	249
Wilkinson <i>v.</i> Colley, 5 Burr, at p. 2698	234
——— <i>v.</i> Gibson, L. R. 4 Eq. 162, 167	49
——— <i>v.</i> Leland, 2 Peters, 627	29
Williams <i>v.</i> Beaumont, 10 Bing. at p. 272	278, 281
——— <i>v.</i> Drewe, Willes, 392	167
——— <i>v.</i> Evans, L. R. 1 Ex. D. 277	120
——— <i>v.</i> Golding, L. R. 1 C. P. 69	183
——— <i>v.</i> G. W. R. Co., 10 Ex. 15	62
——— <i>v.</i> Lear, L. R. 7 Q. B. 285	125
——— <i>v.</i> Newton, 14 M. & W., at p. 757	148
——— <i>v.</i> Pritchard, 4 T. R. 2	334
——— <i>v.</i> Roberts, 1 C. M. & R. at p. 680	118
——— <i>v.</i> Rougheedge, 2 Burr. 747	268
——— <i>v.</i> Sanger, 10 East, 66	244
——— <i>v.</i> Smith, 2 H. & N. 443, 4 H. & N. 559	159
——— <i>v.</i> Swansea Canal Navigation Co., L. R. 3 Ex. 158	64, 208
Willion <i>v.</i> Berkley, Plowd. 223, 231	37, 38, 41, 100
Willison <i>v.</i> Watkins, 3 Peters, 54	232
Wilmot <i>v.</i> Rose, 3 E. & B. 563	274
Wilson <i>v.</i> Knubley, 7 East, at p. 134	57, 214
——— <i>v.</i> Mayor of Halifax, L. R. 3 Ex. 114	91
——— <i>v.</i> Rankin, L. R. 1 Q. B. 162	86

Wil—You.

	PAGE
Wilson v. West Hartlepool Rail. Co., 2 De G. J. & S., at p. 496	227
——— v. Wilson, L. R. 2 P. & D. at p. 347	115
Wiltes Peerage Claim, 4 H. L. C. 126	11
Wilton v. Chambers, 7 A. & E. 532	147
Wimbish v. Tailbois, Plowd. at p. 59	240
Winchester's Case, 3 Rep. at p. 4 a	236
Windham v. Chetwynd, 1 Burr. at p. 419	147
Winn v. Mossman, L. R. 4 Ex. 292—300	174, 285
Wolton v. Gavin, 16 Q. B. 48, 64	210
Wolverhampton New Waterworks Co. v. Hawkes- ford, 6 C. B. N. S. 356	72, 75
Wood, Re, L. R. 7 Ch. at p. 306	21
——— v. Riley, L. R. 3 C. P. 26	155
——— v. U. S. 16 Peters, 342	326
Woodward v. Cotton, 1 C. M. & R. 44	220
——— v. Sarsons, L. R. 10 C. P. at p. 746	205
——— v. Watts, 2 E. & B. 452	109, 115
Worsley v. South Devon Rail. Co., 16 Q. B. 539	300
Worth v. Budd, 2 B. & Ad. 172	93
Wray v. Ellis, 1 E. & E. 276	335
Wright v. Greenroyd, 1 B. & S. 758, 762	160
——— v. Hale, 6 H. & N. 227	166
——— v. Pearson, L. R. 4 Q. B. 582	132
——— v. Wales, 5 Bing. 336	95
Wrightup v. Greenacre, 10 Q. B. 1	320
Wynn v. Shropshire Rail. Co., 5 Ex. 420	29
Wynne v. Middleton, 1 Wils. at p. 126	235
 YALE v. The King, 6 Brown Parl. Cas. 27, 30	 210
Yarmouth Corporation v. Simmons, L. R. 10 Ch. D. 518, 527	 48
York, Dean and Chapter v. Middleborough, 2 Y. & J. 196	239, 281
York, Matter of Dean of, 2 Q. B. 34	106
Yorke v. Chapman, 10 A. & E. 207	76
Young v. Cook, L. R. 3 Ex. D. 101	124

You—Zol.	PAGE
Young <i>v.</i> Grattridge, L. R. 4 Q. B. 166 . . .	185
— <i>v.</i> Rishworth, 8 A. & E. 470 . . .	165
Ystalfera Iron Co. <i>v.</i> Neath & Brecon Rail. Co., L. R. 17 Eq. 142	140
ZOLLVEREIN, The, 1 Swab. 96	32

ERRATA.

- Page 70 (note *f*) for Crowther's case read Crouther's case.
 „ 94 (note *f*) for 13 C. B. read 13 C. B. N. S.
 „ 113 (note *r*) for 3 H. & N. read 2 H. & N.
 „ 135 (note *n*) for 6 T. R. 154 read 6 T. R. 194.
 „ 187 (note *d*) for R. *v.* Cambrian Rail. Co.'s scheme read Re
 Cambrian Rail. Co.'s scheme.

CHAPTER I.

STATUTES AND STATUTE LAW.

STATUTE Law has usually been defined as the written law, *lex scripta*, in contrast with Common Law, which has received the name of the unwritten law, *lex non scripta* (a). But this definition is manifestly incomplete and unsatisfactory. It is open to the grave objection that it substitutes a comparison of two things, not having necessarily such a relation to each other, for the exact description of the one thing which it professes to supply. By thus putting Statute Law in antagonism with Common Law, it virtually assumes that the leading characteristic of the one is opposed to the leading characteristic of the other. Regarding Common Law as unwritten, and therefore residing solely in the breasts of the judges, it would teach us to consider Statute Law as written, and therefore placed above all the changes and chances of judicial interpretation. In the one case, we boast of elasticity; in the other, we look for certainty. Yet the most cursory examination of the Statute

Statute Law : usual definition.

Implies that Statute Law is certain..

(a) *Hale's Hist. Common Law*, 21 ; 1 *Blackstone*, 63 ; 1 *Kent's Commentaries*, 446.

Book, and of the cases which have been decided upon the construction of statutes, will show that this result cannot be expected, and has never been attained. "Sure I am," said Lord Bacon in his Proposal for Amending the Laws of England (*b*), "there are more doubts that rise upon our statutes, which are a text law, than upon the Common Law, which is no text law." The experience of nearly three centuries has fully justified this saying, and shown the prophetic insight of its author. But if such doubts prevailed in comparatively early times, before the framers of statutes had passed from extreme conciseness to extreme diffuseness, from the enunciation of general principles to an enumeration of particular instances; before successive Parliaments attempted by compromises to cure the evils of a past legislation which they were neither bold enough nor strong enough to undo; before succeeding generations of judges sought by refined and subtle distinctions to minimise the effect of decisions which they would not overrule, but in which they could not acquiesce; what words can express the feelings of perplexity with which a modern observer must approach the subject?

Causes of
its uncer-
tainty.

The doubts and difficulties which chiefly tend to create uncertainty in the Statute Law are due to several causes.

1. Imper-
fection of
language.

The first of these, though not the most fruitful, is the imperfection of all human language. The greatest care, the highest art, the fullest mastery

(*b*) *Bacon's Works*, by Basil Montagu, vol. v., p. 346.

of diction, have not always availed to banish obscure passages from the works of our classical authors. Even if a writer has a clear conception of the thoughts which he wishes to express, and chooses with extreme accuracy the precise words which convey his meaning, he cannot be certain that his readers will understand those words in the same sense as that in which he has used them. "There is no word in the English language which does not admit of various interpretations. It is, no doubt, frequently found that the imperfection of language leads to litigation on the construction of statutes and the meaning of terms" (c). Words which when first received into our language had a definite meaning, and which retained that meaning so long as their origin was regarded, have lost their primary sense by passing from the few to the many, from the works of scholars to the talk of the people. Sometimes the primary sense of the word survives the change, but is used by purists only. Sometimes the popular use gives way to the necessities of some art or trade, and the word acquires a technical meaning. While language itself brings in these elements of doubt and is subject to such constant change, it is difficult to accept a definition which would give Statute Law the character of certainty.

We come, however, to a much more fruitful source of trouble when we consider the language and style which have been adopted by the framers of our statutes. The draftsmen who have pre-

2. Language and style of statutes themselves.

(c) *R. v. Skeen*, Bell's Crown Cases, at p. 134, *per* Pollock, C.B.

pared the bills submitted to Parliament, the members of Parliament who have altered every clause in Committee, may at one time have formed a clear conception of the thoughts which they wished to express, but have very seldom chosen apt words to convey their meaning. As a necessary result of this we hear complaints from every quarter. Lord Campbell speaks of "an ill-penned enactment, like too many others, putting judges in the embarrassing situation of being bound to make sense out of nonsense, and to reconcile what is irreconcilable" (*d*). Mr. Justice Story, dealing with the suggestion that the Legislature had used superfluous language, words which were either unnecessary or tautological, observes, "I believe that there are very few acts of legislation in the Statute Book, either of the State, or of the National Government, or of the British Parliament, which do not fall within the same predicament, and are not open to the same objection; or, if you please, to the same reproach. The truth is, that it arises sometimes from loose and inaccurate habits of composition of the draftsman; sometimes from hasty and unrevised legislation; but more frequently from abundant and, perhaps, over-anxious caution" (*e*). And in the First Report of the Statute Law Commissioners, published in 1835, we find a concise summary of the defects of our legislation. "The imperfections in the Statute Law arising from mere generality, laxity, or ambiguity of expression, are too numerous and too well known to require

(*d*) *Fell v. Burchett*, 7 E. & B. at p. 539.

(*e*) *United States v. Bassett*, 2 Story, at p. 404.

particular specification. They are the natural result of negligent, desultory, and inartificial legislation; the statutes have been framed extemporaneously, not as parts of a system, but to answer particular exigencies as they occurred" (f).

It would be easy to collect similar or even stronger expressions of blame, and it might be interesting to inquire in what proportions that blame should be distributed between the draftsman and the Legislature. To the first we probably owe the faults which lie on the surface, the redundant phrases, the verbiage, the involved and cumbrous sentences which disfigure the style of our statutes. We find a most significant commentary upon these defects in the Report of a Committee of the House of Commons, presented in May, 1796. Under the heading of "Prolixity and Tautology," we read that these two characteristics of our statutes began in the reign of Henry the Eighth. The report selects some glaring instances of proluxity, and then adds, with significant brevity, "Instances of tautology, *passim*" (g). We must not, however, forget that the path of a parliamentary draftsman is beset with difficulties. His duty is to draw a bill which may pass; it is for others to consider whether or no the Act will work. A clear expression of the object and intention of the framer of a bill would often provoke an opposition which is lulled to sleep by studied ambiguity. Severely as the language of

How far
due to the
framers of
statutes.

(f) Report, p. 16.

(g) *Report on Temporary Laws: Appendix to Mr. Bellenden Ker's First Report on Proceedings of Board for Revision of Statute Law, 1853, p. 202.*

our Acts of Parliament has been criticised by the judges, more than one of them has gallantly taken up the defence of the draftsman. "I am sure," says Lord St. Leonards, "we ought to make great allowances for the framers of Acts of Parliament in these days: nothing is so easy as to pull them to pieces, nothing is so difficult as to construct them properly as the law now stands" (*h*). The words of Bramwell, L.J., are still more forcible: "People who draw Acts of Parliament are very commonly found fault with by those who never drew an Act themselves. I suppose it is impossible to foresee all the difficulties that will arise, and to use exactly precise words—to say nothing of the difficulties under which Acts are drawn up" (*i*). So, too, it is said by Cleasby, B.: "It seldom happens that the framer of an Act of Parliament or the Legislature has in contemplation all the cases which are likely to arise, and the language, therefore, seldom fits every possible case" (*k*).

How far to
the Legis-
lature.

Although in the language just quoted the same excuse is made for the Legislature as for the draftsman, there is something savouring of disrespect in such a suggestion. The Legislature, which, in theory and within its own province, is omnipotent, ought not to find any difficulties insuperable. Yet to the Legislature itself are due those graver faults than mere faults of style, which often paralyze the working of our statutes. Hasty and ill-considered Acts aimed at a partial evil, and sweeping away or

(*h*) *O'Flaherty v. M'Dowell*, 6 H. L. C. at p. 179.

(*i*) *R. v. Monck*, L. R. 2 Q. B. D. at pp. 552—3.

(*k*) *Scott v. Legg*, L. R. 2 Ex. D. at p. 42.

tampering with some vital principle of law, amending Acts which have proved unintelligible made worse by reamendment, familiar words rendered strange by interpretation clauses, local Acts extended in part to the whole country, and again restricted in part by subsequent efforts of piecemeal legislation (*l*), are evils of constant occurrence, some of them to be found in each yearly volume of the statutes. Such evils called forth Lord Tenterden's happy adaptation from Horace, the saying that the Legislature, if not like a man on his death-bed, whose last will is to be favourably construed because he is *inops consilii*, may be called *magnas inter opes inops* (*m*). Such evils, perhaps, led an earlier judge to remark of a particular piece of legislation, "I am inclined to think the Parliament purposely penned the Act in this obscure manner not to disoblige their constituents, many of whom are tradesmen" (*n*).

A third cause of uncertainty is to some extent the consequence of the two with which we have dealt, and this brings more clearly to our notice the incompleteness of the usual definition. That definition confounds two things which are in reality distinct from each other. It treats the statutes themselves and Statute Law as identical. The statutes themselves may be described as written

3. Judicial interpretation.

(*l*) See the remarks of Blackburn, J., in *R. v. Overseers of Walcot*, 2 B. & S. at p. 568.

(*m*) *Surtees v. Ellison*, 9 B. & C. at pp. 752—3.

(*n*) *Buxton v. Mingay*, per Bathurst, J., 2 Wilson, at p. 73. "Every now and then Parliament arrives at a conclusion which is designedly left in obscurity."—Sir J. Stephen, Evidence before Select Committee on Acts of Parliament, 1875.

laws, but an essential part of Statute Law is that which is not written, which is elastic, which resides in the breasts of the judges, the method by which statutes are to be interpreted. The rules for the construction of statutes which have been laid down at different times give scope for the widest variety. It is hardly necessary to refer to the liberal construction of some statutes and the strict construction of others; to the manner in which words of permission are rendered imperative, and words of command are treated as if they were directory; to the cases in which words have been transposed, inserted, or omitted, read in a technical sense, or in a sense new to the English language; to the assumed necessity for express words in some instances, and the large effect given by implication in others; to the many other modes by which the Courts have striven to do justice in particular cases while professing to ascertain the intention of the Legislature. If language were certain, if the intention of the Legislature were clearly expressed, there would be no necessity, as there would be no room, for these varieties of interpretation. But as things now stand the principles upon which statutes are to be construed form the most important part of our examination of Statute Law, and no definition would be complete which did not take this fact into consideration.

Statute
Law :
suggested
definition.

Statute Law may, we think, be properly defined as the will of the nation, expressed by the Legislature, expounded by Courts of Justice. The Legislature, as the representative of the nation, expresses the national will by means of statutes. Those

statutes are expounded by the Courts so as to form the body of Statute Law.

The laws of England draw a clear and broad distinction between legislative and judicial functions. As it is the work of the Legislature to express the will of the nation, and to enact or declare what for the future shall be the law of the country, so it rests solely with the judges to interpret what is so expressed, and to give that law its full operation. "To declare what the law is or has been is a judicial power; to declare what the law shall be is legislative" (o). It is not for the Legislature to construe the law, even if the Courts may have mistaken its intention. "The province of the Legislature is not to construe but to enact, and their opinion—not expressed in the form of law as a declaratory provision would be—is not binding on Courts, whose duty is to expound the statutes they have enacted" (p). On the other hand, it is not for the judges to alter the law, even if they see cause to doubt the wisdom or justice of any particular provision. "The judges are not to make the law what they may think reasonable, but to expound it according to the common sense of its words" (q). "I dread very much the consequences if once the Judicature begins to trespass on the province of the Legislature, and to pronounce not what the enactment is but what it ought to be. If we do, I do not know where we are to stop" (r).

(o) *Ogden v. Blackledge*, 2 Cranch, at p. 276.

(p) *Russell v. Ledsam*, 14 M. & W. at p. 589, *per* Parke, B.

(q) *Biffin v. Yorke*, 6 Scott, N. R. at p. 235, *per* Cresswell, J.

(r) *Eastern Counties Rail. Co. v. Marriage*, 9 H. L. C. at p. 40, *per*

What is a
statute.

We have said that the will of the nation is expressed by means of statutes (*s*); that is, by means of written laws enacted by and with the assent of the three branches of the Legislature. The necessity for the agreement of all three branches of the Legislature has been laid down in early writings of authority, and has received fresh illustration in modern times. "There is no Act of Parliament but must have the consent of the Lords, the Commons, and the royal assent of the King," says Lord Coke in one place (*t*); and in another he expresses the same principle more fully: "If an Act be made by the King and the Lords spiritual and temporal, or by the King and Commons, this bindeth not, for it is no Act of Parliament; for the Parliament concerning making or enacting of laws consisteth of the King, the Lords spiritual and temporal, and the Commons; and it is no Act of Parliament unless it be made by the King, the Lords and Commons" (*u*). In the legislation of early times, indeed, the assent, either of the Lords

Blackburn, J. A different theory prevails in the United States, where the Courts have to decide how far a new law is in harmony with the Constitution. "The fundamental laws of the United States cannot be altered without a reference to the people at large; and the Acts of Congress, therefore, are subject to be disallowed by the Courts of Justice:" *Church Courts and Church Discipline*, by Robert Isaac Wilberforce, Archdeacon of the East Riding, p. 152. See 1 *Kent's Commentaries*, 448.

(*s*) "The word 'statute' has several meanings. It may mean what is popularly called an Act of Parliament, or a code such as the Statute of Westminster the First, or all the Acts passed in one session, which was the original meaning of the word." *R. v. Bakenwell*, 7 E. & B. at p. 851, *per* Lord Campbell, C.J.

(*t*) 4 Inst. 25.

(*u*) 2 Inst. 157—8.

spiritual (x), or of the Lords and Commons (y), has been presumed, either from the fact that statutes have been entered as such on the Parliament roll, or have been generally received as statutes (z). Thus, the name of a statute has been given to "a point resolved in Parliament by all the earls and barons with one voice that they would not change the laws of the realm" (a), and the effect of a statute to a charter granted by King Edward the Third, with the assent of the prelates, earls, barons, and the whole commonalty of the realm in the present Parliament summoned at Westminster (b). On the other hand, it has been held that a prayer of the Commons acceded to by the King, with the assent of the Lords temporal, and entered on the *placita coronæ* in Parliament, but not on the Parliament rolls, was not an Act of Parliament (c). The difference between an Act of Parliament and a resolution of one branch of the Legislature was shown in the case of *Stockdale v. Hansard* (d). The judges of the Queen's Bench refused to give effect to a resolution of the House of Commons which declared that the power of publishing such of its proceedings as it should deem necessary or conducive to the public interest was an essential incident to the constitutional functions of Parlia-

(x) 2 Inst. 585—7.

(y) 2 Inst. 334.

(z) 2 Inst. 639; Co. Litt. 98a, b; *The Prince's Case*, 8 Rep. 20b.

(a) 2 Inst. 99.

(b) *Islington Market Bill*, 3 Cl. & Fin. 513.

(c) *Wiltes Peerage Claim*, L. R. 4 H. L. 126.

(d) 9 A. & E. 1; 11 A. & E. 297.

ment. They yielded instant and implicit obedience to a statute which contained a similar recital.

What is
authentic
record of
statutes.

Down to the year 1849 the only authentic record of the statutes of the realm was to be found in the Parliament roll, which was engrossed upon parchment and kept amongst the public records. If any doubt arose as to the correctness of a printed copy of an Act of Parliament, or if two printed copies differed, the Court would refer to the roll, or accept the printed copy which had been examined with it (*e*). As, however, the Parliament roll was engrossed without punctuation, the help it gave was not always of much value (*f*). In 1849 both Houses of Parliament resolved, that for the future each bill, instead of being engrossed, should be printed by the Queen's printer, and that a print on vellum, authenticated by the clerk of the Parliament or by some other proper officer of the House of Lords, should be deposited in the Record Tower (*g*).

Legisla-
ture is
presumed

As it is the function of the Legislature to express the national will by means of statutes, it

(*e*) *R. v. Jeffries*, 1 Strange, 446. In the United States more regard seems to be paid to the copies which have generally been received as correct than to the original statute. It is laid down in one case that, "Where a law as published has been acknowledged by the people, and receives a harmonious interpretation for a long series of years, and the published law is subsequently recognised by legislative authority and adopted as a rule for the future, it is not competent for any one to show by reference to an ancient manuscript that such published law was not a true transcript of the original." —*Pease v. Peck*, 18 Howard, 595.

(*f*) *Barrow v. Wadkin*, 24 Beav. at p. 330.

(*g*) These resolutions are printed in "The Standing Orders of the House of Commons," 1849, p. 74.

is essential that the Legislature should know what ^{to know the law.} is the existing state of the law whenever any statute is passed, and it is always presumed that the Legislature possesses such knowledge (*h*). This principle is somewhat strained when it is stated that the Legislature must be presumed to know the difference between Chancery and Bankruptcy practice (*i*); but if it is confined within narrower limits it affords a safe rule for our guidance. It is true that the presumption, like most others, is arbitrary, and rests not so much upon fact as upon expediency. But although in certain instances Parliament has shown a want of familiarity with existing principles of law, these cases have been treated as exceptional, and have not affected the strength of the presumption.

One of the most important consequences of such a presumption is that an erroneous declaration of ^{Effect of erroneous declaration of law.} existing law is wholly inoperative. Speaking of an Act which was apparently based upon an erroneous view of the Law of Partnership, the Privy Council said:—"The enactment is no doubt entitled to great weight as evidence of the law, but it is by no means conclusive; and when the existing law is shown to be different from that which the Legislature supposed it to be, the implication arising from the statute cannot operate as a negation of its existence" (*k*). Thus it was

(*h*) *R. v. Walford*, 9 Q. B. at p. 635; *Jones v. Brown*, 2 Ex. at p. 332.

(*i*) *Kellock's Case*, L. R. 3 Ch. at p. 781, *per* Selwyn, L.J.

(*k*) *Mollwo v. Court of Wards*, L. R. 4 P. C. at p. 437. See, too, *Earl of Shrewsbury v. Scott*, 6 C. B. N. S. at p. 141, *per* Cockburn,

held that an Act of the 3rd year of James the First, which erroneously recited that sewers, streams and watercourses, where no passage of boats was used, and where the water did not usually ebb and flow, were not under the survey of the Commission of Sewers, nor of the statute made for sewers in the 23rd year of Henry the Eighth, did not take away the jurisdiction which the Act of Henry the Eighth had in fact given to the Commissioners over a sewer above the ebb and flow of the tide (*l*).

Effect of
recitals.

Another consequence of this presumption appears in the effect given to recitals. It is said by Lord Campbell (*m*), in a passage cited with approval by Lord Chelmsford (*n*), that “a mere recital in an Act of Parliament, either of fact or law, is not conclusive; and we are at liberty to consider the fact or the law to be different from the statement in the recital.” If an Act of Parliament recites that a road is situated in a certain parish (*o*), that a certain town is a borough (*p*), that a person is a member of a company (*q*), that a prior tenant for life of an estate is dead (*r*), or that a person has

C.J.; *Ex parte Lloyd*, 1 Sim. N. S. at p. 250, *per* Lord Cranworth, V.-C.; *Mitcalfe v. Hanson*, L. R. 1 H. L. at p. 250, *per* Lord Cranworth, C.

(*l*) *Dore v. Gray*, 2 T. R. 358.

(*m*) *R. v. Haughton*, 1 E. & B. at p. 516.

(*n*) *Jones v. Mersey Docks*, 11 H. L. C. at p. 518; 20 C. B. N. S. at p. 143.

(*o*) *R. v. Haughton*, 1 E. & B. 501.

(*p*) *R. v. Greene*, 6 A. & E. 548.

(*q*) *Scott v. Berkeley*, 3 C. B. 925.

(*r*) *Cowell v. Chambers*, 21 Beav. 619.

been attainted of treason (s), the Court will not act upon such recitals without further evidence, or will allow them to be contradicted. The highest value which was ever put upon such recitals was their recognition as evidence of the facts contained in them (t); but this sanction was denied them when they formed part of private Acts of Parliament, which were held to be binding upon none save parties and privies (u). The reason for attaching no greater weight than this to the recitals in Acts of Parliament is given in an early case:—"This recital cannot be taken to proceed but upon information, and the Court of Parliament may be misinformed as well as other Courts; none can imagine they would purposely recite a false thing to be true . . . From hence it follows that they do not intend any one to be concluded by such recital grounded upon falsehood, for he who says to the contrary affirms that their intention is to oppress men wrongfully" (x).

With regard to recitals which are inaccurate in point of law we must bear in mind that the power of declaring what the law shall be for the future includes the power of altering the law, and therefore an Act which is erroneous in its recital of existing principles may become accurate by May alter the law.

(s) *Earl of Leicester v. Heydon*, Plowd. 384, 398.

(t) *R. v. Sutton*, 4 M. & S. 532; *R. v. Berenger*, 3 M. & S. 67.

(u) *Brett v. Beals*, Moody & Malkin, 416; *Taylor v. Parry*, 1 M. & G. at p. 619; *Duke of Beaufort v. Smith*, 4 Ex. at p. 470; *Earl of Shrewsbury v. Scott*, 6 C. B. N. S. at p. 157; *Wharton Peerage*, 12 Cl. & Fin. at p. 302, explained by Lord St. Leonards in the *Shrewsbury Peerage*, 7 H. L. C. at p. 13. See also the remarks of Brett, L.J., in *Sturla v. Freccia*, L. R. 12 Ch. D. at p. 432.

(x) *Earl of Leicester v. Heydon*, Plowd. at p. 398.

reason of the changes it has effected. Thus where an Act of Congress in giving jurisdiction of a certain kind to District Courts used words which "indicated an opinion" that such jurisdiction already existed in Circuit Courts, it was held that the effect of these words was to give the Circuit Courts that jurisdiction which they were assumed to possess. The words of the Act were that District Courts should have cognizance concurrent with the Circuit Courts of certain actions, and the Court said, "a mistaken opinion of the Legislature concerning the law does not make the law. But if this mistake is manifested in words competent to make the law in future we know of no principle which can deny them this effect. The Legislature may pass a declaratory Act which though inoperative on the past may act in future. This law expresses the sense of the Legislature on the existing law as plainly as a declaratory Act, and expresses it in terms capable of conferring the jurisdiction" (y).

Legisla-
ture is
presumed
to know
the con-
struction
put upon
statutes
by the
Courts.

The Legislature is presumed to know not only the general principles of law, but the construction which the Courts have put upon particular statutes. Where an Act or a section which has received a judicial construction is re-enacted in the same words, such re-enactment is treated as a legislative recognition of that construction (z). So where an Act *in pari materia* with one which has received a judicial construction uses the same words which

(y) *Postmaster-General v. Early*, 12 Wheaton, 136, 148.

(z) *Mansell v. The Queen*, 8 E. & B. at p. 73, *per* Lord Campbell, C.J.; *Ex parte Campbell*, L. R. 5 Ch. 703.

have been so construed, or analogous words, the Court infers that those words are intended to convey the same meaning (a). Thus, where the provisions of one tariff Act are substituted for those of another, the Legislature cannot be presumed to attach to the terms employed in the second Act a different sense from that which had been adopted in the first (b). In like manner, where the County Courts Act, 1846, provided that a plaintiff dwelling more than twenty miles from the defendant might sue in the Superior Court, it was held that these words recognised a former decision, by which the miles were to be measured in a straight line. "The Legislature, which must be taken to know that such was the construction put upon the words by this Court, and that the decision stood unreversed, uses the same words. It seems fair to say that it was intended that they should be construed in the same manner" (c).

Again, where the Legislature itself has put a particular construction upon the words of a statute, and the same words are used in a subsequent statute, the meaning which has thus been recognised by the Legislature must be adopted. The Bankruptcy Act, 6 Geo. IV. c. 6, s. 125, had avoided all securities given by a bankrupt to any creditor with a view of persuading such creditor to sign the bankrupt's certificate. This provision was repealed

(a) *Jones v. Mersey Docks*, 11 H. L. C. at p. 480; 20 C. B. N. S. at p. 124; *East and West India Docks v. Guttle*, 3 Macn. & G. at p. 166.

(b) *Roosevelt v. Maxwell*, 3 Blatchford's Circuit Court Reports, 391.

(c) *Lake v. Butler*, 5 E. & B. at p. 95, *per* Crompton, J.

by 5 & 6 Wm. IV. c. 41, on the ground that it would be a hardship if such securities were rendered void when they were in the hands of *bonâ fide* holders. The earlier section, however, was re-enacted in substantially the same terms by the Bankruptcy Act, 1849 (12 & 13 Vict. c. 106, s. 202), and it was held that the construction adopted by the Legislature must be put upon the re-enactment, and that such securities were void in the hands of *bonâ fide* holders (*d*).

Such construction recognised by implication.

An express recognition of the construction which the judges have put upon statutes is not always needed. In some cases the silence of the Legislature is equally emphatic. As the Legislature knows what the law is and has the power of altering it, any mistakes on the part of the judges may at once be corrected. The absence of any such correction shows that the Courts have rightly ascertained the intention of the Legislature. "I recollect," says Lefroy, B., "Lord Redesdale saying, that when the Court has been in the habit of putting a particular construction upon an Act of Parliament, and the Legislature has not interfered, it must be considered as the true construction of the Act" (*e*). If, however, Parliament has expressly recognised any judicial decision, and that decision is afterwards overruled, is it to be said that the Legislature has mistaken the law, or is there room for any conflict between the Court which has the power to overrule and the Legisla-

(*d*) *Goldsmid v. Hampton*, 5 C. B. N. S. 94.

(*e*) *Phelan v. Johnson*, 7 Ir. L. R. at p. 535.

ture which has the power to sanction? Either of these inferences would be based upon a total misapprehension of the effect of that change in the law which is caused by the reversal of a judicial decision. All persons are bound to accept the judgment of a competent tribunal, and no one is entitled to speculate upon the chance of its being overruled. The Legislature is presumed to know the law as it is, not the law as it may be at some future time. An enactment, therefore, which correctly recites the effect of the decisions in force at the time of its passing, is not rendered inoperative by the reversal of those decisions, nor does it serve to keep them alive. An instance of this occurs in the case of *R. v. Mayor of Oldham* (*f*). It had been held in some of the earlier cases that corporate property occupied for municipal purposes only was not rateable. An Act of the 4 & 5 Vict. c. 48, referred to the exemption which had been created by these decisions, and enacted that in one particular case that exemption should continue. Afterwards the decisions which conferred the exemption were overruled. It was held, however, that the particular exemption recognised by this Act no longer depended on the former decisions, but had received the express sanction of the Legislature.

The presumption that the Legislature knows what is the existing law at the time when it passes any statute, is a most important element in the consideration of the changes which such statute may effect. It would be impossible to form a consistent or harmonious view of our law if each

Legisla-
ture not
presumed
to make
unneces-
sary alter-
ation in
Common
Law.

(*f*) L. R. 3 Q. B. 474.

statute were to be regarded as an independent act of legislation, and not as a part of a general system. We are, therefore, bound to assume that in passing a statute the Legislature has before its mind's eye an exact outline of the law affecting the particular subject with which it is dealing. The new statute is intended, as far as possible, to fit into the existing framework. No greater change is to be made in the law than is absolutely necessary. "Statutes are not presumed to make any alteration in the Common Law further, or otherwise, than the Act does expressly declare; therefore, in all general matters, the law presumes the Act did not intend to make any alteration; for, if the Parliament had that design, they would have expressed it in the Act" (g). "The general words of an Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched" (h). For the same reason, it is presumed that the Legislature does not intend to "go against the ordinary rules of law," (i) to create a new and extended liability by general words (k), or to interfere with the principles established by the law of nations (l). Where, however,

(g) *Arthur v. Bokenham*, 11 Mod. at p. 150, *per* Trevor, C.J.

(h) *Minet v. Leman*, 20 Beav. at p. 278, *per* Romilly, M.R.

(i) *Wear Commissioners v. Adamson*, L. R. 1 Q. B. D. at p. 554, *per* Mellish, L.J.

(k) *Wear Commissioners v. Adamson*, L. R. 2 App. Cas. 743.

(l) *Leroux v. Brown*, 22 L. J. C. P. at p. 3, *per* Maule, J.; *General Iron Screw Collier Co. v. Schurmans*, 29 L. J. C. at p. 879, *per* Wood, V.-C.; *Murray v. Charming Betsy*, 2 Cranch. Sup. Ct. at p. 118.

the provisions of a statute are in direct conflict with any principle of Common Law, and effect cannot be given to the statute unless it is to prevail over the Common Law, we are to presume that "Parliament (in whose power it was so to do) resolved to leap over and waive the rules of law, and to make a particular law for that occasion" (*m*).

An intention on the part of the Legislature to alter the Statute Law is sometimes presumed upon much slighter grounds than would support any such inference in the case of the Common Law. Such an intention has been presumed from the use of words in one part of an Act differing from those used in another (*n*). It has also been presumed, and with more reason, from the re-enactment of a former Act or section, in substantially different language (*o*). Slight change of language, introduced for the purpose of improving the "graces of style," is not within the rule (*p*); nor are we to attach any weight to the omission of words which are superfluous (*q*), or which merely declare what the law would imply without them (*r*).

Alterations in Statute Law more readily presumed.

(*m*) *Murrey v. Eytton*, Sir T. Raymond, at p. 355.

(*n*) *Edrick's case*, 5 Rep. at p. 118b; *R. v. Great Bolton*, 8 B. & C. at p. 74, per Lord Tenterden, C.J. See, however, the remarks of Patteson, J., *R. v. Marquis of Downshire*, 4 A. & E. at p. 714. Where the word "month" is used in one section, and the words "calendar month" in a later section, the first month has been held to be a lunar month. *Crooke v. M'Turish*, 1 Bing. 307.

(*o*) *Fearnley v. Morley*, 5 B. & C. at p. 30.

(*p*) See *Hadley v. Perks*, L. R. 1 Q. B. at p. 457; 7 B. & S. at p. 839; and *Swinford v. Keble*, 7 B. & S. at p. 587.

(*q*) *R. v. Buttle*, L. R. 1 C. C. R. at p. 252; *Re Wood*, L. R. 7 Ch. at p. 306.

(*r*) *Horn v. Ion*, 4 B. & Ad. 78.

But where an Act which repeals an earlier statute re-enacts some of its provisions, but omits either a whole clause or a material part of a clause, it must be taken that the omission is intentional, and that the new Act is to receive a new meaning (*s*). Thus, under the Highway Act (5 & 6 Wm. IV. c. 50, s. 74), it was an offence if any horse was found lying, or being depastured, on any highway or on the sides thereof without a keeper. This section was repealed by the 27 & 28 Vict. c. 101, and re-enacted in nearly the same language, but with the omission of the words "without a keeper." It was held that the omission of these words must be considered intentional, and that under the new Act a penalty was incurred, although a horse was under the charge of a keeper (*t*). So where the 8 Geo. II. c. 13, imposed penalties on persons selling pirated engravings knowing them to be pirated, and the 17 Geo. III. c. 57, enabled the owner of the copyright of the original engraving to maintain an action against persons found selling pirated copies, it was held that the omission in the later Act of the ingredient of knowledge was intentional, and that the seller was liable to an action, even if he did not know of the infringement of the copyright (*u*). So, again, the 35 & 36 Vict. c. 78, imposed a penalty on persons selling wild birds between certain dates, unless they could prove

(*s*) *Moser v. Newman*, 6 Bing. 556; *R. v. Great Bentley*, 10 B. & C. at p. 526.

(*t*) *Lawrence v. King*, L. R. 3 Q. B. 345.

(*u*) *West v. Francis*, 5 B. & Ald. 737; *Gambart v. Sumner*, 5 H. & N. 5, 29 L. J. Ex. 98.

that such birds were received from some one residing out of the United Kingdom. The 39 & 40 Vict. c. 29, recited that the protection given by the earlier Act was insufficient, and altered the penalties, the dates and description of the offence, without any reference to the question whether or no the birds were received from any one residing out of the United Kingdom. It was held that it was an offence under the second Act to sell birds which had been received from Holland (*x*). Where an Act prohibited the appropriation of any ground as a burial-ground nearer than 200 yards to any dwelling-house, and another Act substituted words prohibiting the use of any ground for burials within 100 yards of any dwelling-house, it was held that under the second Act a cemetery might be less than 100 yards from a dwelling-house, but that no bodies might be buried within that distance (*y*).

We turn now to the function which the Courts of Justice are to exercise upon the statutes as they are passed by the Legislature. It was long since laid down that the Courts of Common Law are entrusted with the exposition of Acts of Parliament (*z*), and that the judges are the proper expounders of statutes (*a*). Judicial functions.

In the exposition of statutes, however, the judges are to be guided not "by the crooked cord of discretion, but by the golden metwand of the

(*x*) *Whitehead v. Smithers*, L. R. 2 C. P. D. 553.

(*y*) *Lord Cowley v. Byas*, L. R. 5 Ch. D. 944.

(*z*) *Carter v. Crawley*, Sir T. Raymond, at p. 497, *per* Lord Chief Justice North; *Horne v. Earl Camden*, 2 H. Bl. at p. 536, *per* Lord Chief Justice Eyre.

(*a*) 2 Inst. 611, 614, 618.

Not to
supply de-
ficiencies.

law" (b). They are to "bend and conform their legal reason to the words of the Act of Parliament" (c). It is not their office to make the law (d), or to criticise the law (e), or to supply what they may consider deficiencies on the part of the Legislature. Even if the words used in an Act of Parliament are so wide as to include cases which were probably not meant to be included, or so narrow as to exclude cases which were probably not meant to be excluded, the Courts must give effect to those words according to the ordinary rules of construction (f). "*A casus omissus*," says Buller, J., "can in no case be supplied by a Court of Law, for that would be to make laws" (g). Nor are the Courts entitled to inquire how an Act of Parliament may have been passed, how far the parties affected by it may have had an opportunity of being heard (h), how far the forms of procedure which are prescribed by the Houses of Parliament may have been followed (i). If an Act of Parliament has been improperly obtained, the Legislature

Not to in-
quire how
statutes
were
passed.

(b) 4 Inst. 41.

(c) *Murrey v. Eyton*, Sir T. Raymond, at p. 355.

(d) *Weale v. West Middlesex Waterworks Co.*, 1 Jac. & Walk. at p. 371.

(e) "It does not become us to scan the wisdom of the provision which the Legislature have enacted." *Per* Lord Ellenborough, C.J., *R. v. Staffordshire*, 12 East, at p. 577.

(f) *Notley v. Buck*, 8 B. & C. at p. 164, *per* Lord Tenterden, C.J.; *Nixon v. Phillips*, 7 Ex. at p. 192, *per* Parke, B.

(g) *Jones v. Smart*, 1 T. R. at p. 52. See, too, *Cobb v. Mid Wales Railway Co.*, L. R. 1 Q. B. 342.

(h) *Earl of Shrewsbury v. Scott*, 6 C. B. N. S. at p. 160, *per* Cockburn, C.J.

(i) *Edinburgh Rail. Co. v. Wauchope*, 8 Cl. & Fin. at pp. 723-5, *per* Lord Campbell.

alone can provide a remedy (*k*). The Courts cannot allow the authority of the Legislature to be impeached by a suggestion that an Act of Parliament has been obtained by fraud (*l*).

These principles are now firmly established, and lie at the very root of the distinction between legislative and judicial functions. But they have not always been so clearly recognised. "In

This rule has not always been recognised.

days long past judges I think often invaded what we now consider the sole province of the Legislature. They interpreted Statutes to include cases which they assumed to think ought to have been included; thus not merely constituting themselves legislators, but generally also legislators *ex post facto*" (*m*). It was not only by such an extension of the language of Statutes that the judges of former times exposed themselves to this censure.

They put forward a theory which made them not merely the expounders of statutes but the supervisors of the Legislature. In some of the early cases and text-books we find it stated that if Par-

Ancient theories of judicial supremacy.

liament were to pass an Act which was contrary to the law of God or to the law of nature, or to common right and reason, the Common Law would declare that such an Act was void, and the Courts might treat it as a nullity. "If any Statute were made directly against the law of God, the Statute were void" (*n*). "Even an Act of Parliament made

As to statutes made against the Law of God.

(*k*) *Lee v. Bude & Torrington Rail. Co.*, L. R. 6 C. P. at p. 582, *per* Willes, J.

(*l*) *Waterford Rail. Co. v. Logan*, 14 Q. B. 672, 680; *Stead v. Carey*, 1 C. B. at p. 516, *per* Cresswell, J.

(*m*) *Att.-Gen. v. Sillem*, 2 H. & C. at p. 567, *per* Channell, B.

(*n*) *Doctor and Student*, 18th edit., 15, 16.

Against
natural
justice.

against natural Equity, as to make a man judge in his own case, is void in itself, for *jura naturæ sunt immutabilia*, and they are *leges legum*" (o). "When an Act of Parliament is against common right and reason or repugnant or impossible to be performed the Common Law will control it and adjudge such Act to be void" (p). "What my Lord Coke says in Dr. Bonham's case is far from any extravagancy, for it is a very reasonable and true saying that if an Act of Parliament should ordain that the same person should be party and judge, or, which is the same thing, judge in his own cause, it would be a void Act of Parliament, for it is impossible that one should be judge and party, for the judge is to determine between party and party, or between the Government and the party; and an Act of Parliament can do no wrong, though it may do several things that look pretty odd; for it may discharge one from his allegiance to the Government he lives under and restore him to the state of nature; but it cannot make one that lives under a Government judge and party" (q).

Modern
refutations
of that
theory.

Against these expressions we may place the words of judges whose learning does not yield to that which was the boast of earlier generations, who have known how to maintain their independence but have never claimed supremacy. It is laid down by Coleridge, J., that although Parliament may have legislated under a misinterpretation

(o) *Day v. Savadge*, Hobart, 87.

(p) *Bonham's case*, 8 Rep. 118a.

(q) *City of London v. Wood*, 12 Mod. at pp. 687—8, per Lord Holt, C.J.

of the law of God, the Courts are bound to act upon the Statute which is brought before them (r). It is stated by Blackburn, J., that although it is contrary to the general rule of law, not only in this country but in every other, to make a person a judge in his own cause, yet the Legislature can, and no doubt in a proper case would, depart from that general rule (s). And the principles which guide the Courts of Justice in their relations to the Legislature are expressed by Willes, J., in clear and cogent language: "We do not sit here as a Court of Appeal from Parliament. It was once said—I think in Hobart (t)—that if an Act of Parliament were to create a man judge in his own case the Court might disregard it. That *dictum*, however, stands as a warning rather than an authority to be followed. We sit here as servants of the Queen and the Legislature. Are we to act as regents over what is done by Parliament with the assent of the Queen, Lords and Commons? I deny that any such authority exists. The proceedings here are judicial, not autocratic, which they would be if we could make laws instead of administering them" (u).

(r) *R. v. Chadwick*, 11 Q. B. at p. 238.

(s) *Mersey Docks Trustees v. Gibbs*, L. R. 1 H. L. at p. 110.

(t) *Day v. Savadge*, Hobart, 87.

(u) *Lee v. Bude & Torrington Rail. Co.*, L. R. 6 C. P. at p. 582.

CHAPTER II.

THE AUTHORITY OF STATUTES.

Authority
of statutes
the highest
known to
the law.

THE first and most important matter to be considered with regard to statutes is their authority. That authority is the highest known to the law, and, in theory at least, and within its own province, is unlimited. An Act of Parliament, says Blackstone, is the exercise of the highest authority that this kingdom acknowledges upon earth (*a*). According to Lord Coke, "the highest and most binding laws are the statutes which are established by Parliament" (*b*); "of the power and jurisdiction of the Parliament for making of laws, it is so transcendent and absolute as it cannot be confined either for causes or persons within any bounds" (*c*).

What can
be done by
statutes.

Some of the early writers give instances of strange things which have been done by Acts of Parliament, and the list may be augmented by recent decisions. Lord Coke says, that a statute can enable daughters or heirs apparent of a man or woman to inherit during the life of their ancestor,

(*a*) 1 *Blackstone's Commentaries*, 186 ; 2 *Stephen*, 7th edit., 389.

(*b*) 2 *Inst. Proeme*.

(*c*) 4 *Inst.* 36.

may adjudge an infant or minor to be of full age, may bastard a child that by law is legitimate, and may legitimate one that is illegitimate (*d*). So an Act of Parliament "may capacitate a man to have an heir or to be an heir that otherwise could not have or be an heir" (*e*), may abrogate a custom (*f*), may make a woman mayor or justice of the peace (*g*), may enable one who is not a party to a deed to sue upon it (*h*), may rescind a covenant in a deed or discharge an obligation under a bond (*i*), may take away those rights which exist at Common Law, and may injure private property without giving any compensation (*k*), may confirm and render valid that which of itself is void (*l*), and may even give it such validity as will enable it to prevail over its competitors, or to avoid titles which had been acquired before the time of its confirma-

(*d*) 4 Inst. 36.

(*e*) *Wheatley v. Thomas*, 1 Lev. at p. 75.

(*f*) *Truscott v. Merchant Tailors' Company*, 11 Ex. 855; *Noble v. Durell*, 3 T. R. 271.

(*g*) *Crow v. Ramsey*, Sir T. Jones, at p. 12.

(*h*) *Gresty v. Gibson*, L. R. 1 Ex. 112; *Reeves v. Watts*, L. R. 1 Q. B. 412; 7 B. & S. 523.

(*i*) *Brewster v. Kitchell*, 1 Salk. 198; *Bailey v. De Crespigny*, L. R. 4 Q. B. 180; *Wynn v. Shropshire Union Railway and Canal Co.*, 5 Ex. 420; *Brown v. Mayor of London*, 9 C. B. N. S. 726; 13 C. B. N. S. 828; *Newington Local Board v. Cottingham Local Board*, L. R. 12 Ch. D. 725.

(*k*) *Boulton v. Crowther*, 2 B. & C. 703; *Ferrar v. Commissioners of Sewers of London*, L. R. 4 Ex. 1, 227.

(*l*) 1 Rolle's Abr. 483; *Earl of Leicester v. Heydon*, Plowd. at p. 399; *Wilkinson v. Leland*, 2 Peters, at p. 662, per Story, J. Such confirmation, however, if conveyed in general words, does not give effect to anything unlawful. *R. v. Mayor of London*, 9 B. & C. at p. 30; *Smith v. Goldsworthy*, 4 Q. B. at p. 466; *Earl of Leicester v. Heydon*, *supra*.

tion (*m*). To use the words of Blackstone, "Parliament can, in short, do everything that is not naturally impossible; and therefore some have not scrupled to call its power by a figure rather too bold, the omnipotence of Parliament. True it is, that what the Parliament doth no authority on earth can undo" (*n*).

Authority
extends
over the
whole
realm,
and to
everybody
within it.

Everybody
presumed
to know
Statute
Law.

The authority of statutes extends over the whole realm, and affects all who are within it. "As soon as the Parliament hath concluded anything, the law intends that every person hath notice thereof, for the Parliament represents the body of the realm" (*o*). For the same reason, it has been laid down in modern times that every man is presumed to know the statute law of the realm (*p*), and that all the subjects of this country are bound to construe that law rightly (*q*). A testator is presumed to know the provisions of the Wills' Act, and to make his will in accordance with them (*r*). But this principle is not carried to its full extent in cases where that would work injustice. Thus a solicitor is not liable to an action for negligence if he has misconstrued a doubtful Act of Parliament (*s*), or if, looking to the express words of a statute, he has supposed that they would be literally followed in a case where the

(*m*) *Stead v. Carey*, 1 C. B. 496.

(*n*) 1 *Blackstone's Commentaries*, 161; 2 *Stephen*, 7th edit. 336.

(*o*) 4 Inst. 26.

(*p*) *Carter v. M'Laren*, L. R. 2 Sc. Ap. at p. 125, *per* Lord Chelmsford.

(*q*) *The Charlotta*, 1 Dods. Adm. at p. 392, *per* Sir W. Scott.

(*r*) *Stokes v. Salomons*, 9 Hare, at p. 79.

(*s*) *Elkington v. Holland*, 9 M. & W. 659.

Court has afterwards adopted a liberal construction (*t*).

The absolute authority of statutes is further illustrated by the principles that there can be no prescription against a statute (*u*), and that equity cannot relieve against its express provisions (*x*). Equity may, indeed, restrain persons from making an application to Parliament, unless such an application is made on public grounds (*y*); but it is difficult to imagine a case in which equity will thus interfere (*z*), and, though the power of a Court of Equity to restrain an application to Parliament is clear, the propriety of its exercising this power is considered doubtful (*a*).

Wide, however, as is the authority of statutes, it is of necessity confined within its own province. That an Act of Parliament cannot alter the course of nature (*b*) is so obvious as to amount to a truism. "It is beyond even the power of the Legislature to make that a party wall which is not a party wall. No doubt they might have made provisions to the effect that that which is not a party wall

(*t*) *Kemp v. Burt*, 4 B. & Ad. at pp. 431—2, *per* Littledale J.

(*u*) 2 Inst. 20.

(*x*) *Cavendish v. Worsley*, Hobart, 203; *Mestaer v. Gillespie*, 11 Vesey, at p. 627, *per* Lord Eldon, C.; *Edwards v. Edwards*, L. R. 2 Ch. D. at p. 297, *per* Mellish, L.J.

(*y*) *Lancaster & Carlisle Rail. Co. v. N. W. R. Co.*, 2 Kay & J. 293.

(*z*) *Steele v. North Met. Rail. Co.*, L. R. 2 Ch. 237; *Re L. C. & D. Rail. Co. Arrangement Act*, L. R. 5 Ch. 671.

(*a*) *Ware v. Grand Junction Waterworks Co.*, 2 Russ. & Mylne, 470; *Att.-Gen. v. Manchester and Leeds Rail. Co.*, 1 Railw. Cas. 436; *Stockton & Hartlepool Rail. Co. v. Leeds, Thirsk, &c., Rail. Co.*, 2 Ph. 670; *Heathcote v. North Staffordshire Rail. Co.*, 2 Macn. & Gordon, 100.

(*b*) *Crow v. Ramsey*, Sir T. Jones, at p. 12.

shall, for the purpose of a particular Act of Parliament, be deemed to be a party wall; but they cannot make what is not a party wall a party wall any more than they can make a square a circle" (c). The true rule upon this subject is, that if Acts of Parliament were to attempt to alter the law of nature they would be inoperative. There can be no conflict between the laws of nature and the laws made by Parliament—no question whether one or the other should yield, for they are wholly independent of each other.

Does not
extend be-
yond limits
of this
country.

Nor does the authority of statutes extend beyond the limits of this country. "The statutes of this realm have no power, are of no force, beyond the dominions of Her Majesty, not even to bind the subjects of the realm unless they are expressly mentioned or can be necessarily implied" (d). "*Prima facie*," says Lord Cranworth in the same case (e), "the Legislature of this country must be taken to make laws for its own subjects exclusively, including under the word subjects all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance." One instance in which an Act of Parliament extends to British subjects out of the dominions is to be found in the statute making marriage with a deceased wife's sister illegal, which extends to marriages solemnised

(c) *Weston v. Arnold*, L. R. 8 Ch. at p. 1089, *per* James, L.J.

(d) *Jefferys v. Boosey*, 4 H. L. C. at p. 939, *per* Pollock, C.B. Dr. Lushington says, indeed, "the laws of Great Britain affect her own subjects everywhere—foreigners when within her own jurisdiction." *The Zollverein*, 1 Swab. 96.

(e) *Jefferys v. Boosey*, 4 H. L. C. at p. 955.

abroad between British subjects (*f*). But in most other cases it has been held that the authority of English Acts of Parliament "stops with the shore," or is even confined to persons and things of purely English nationality. Thus, the Acts relating to wills and legacies have been confined to wills made and legacies left by persons domiciled in England (*g*). Thus, the Succession Duty Act applies to England alone (*h*); the Bankruptcy Act, 1869, does not authorise an adjudication against a foreigner who has never resided in England (*i*); the Companies' Act, 1862, does not extend to a company formed in a foreign dependency of the English Crown (*k*); the Merchant Shipping Act, 1854, refers to British ships only, unless foreign ships are expressly mentioned (*l*). It was held that the copyright conferred by the earlier Acts was confined to British authors, and did not extend to foreigners publishing abroad (*m*); but the words of a later Act were held to include all persons whose works were published for the first time in the United Kingdom, whether they were British subjects or foreigners (*n*). Turning from persons to

Does not
extend to
foreign
things.

(*f*) *Brook v. Brook*, 3 Smale & Giff. 481; 9 H. L. C. 193.

(*g*) *Arnold v. Arnold*, 2 Mylne & Craig, 256; *Thomson v. Adv.-Gen.*, 12 Cl. & Fin. 1; *Att.-Gen. v. Forbes*, 2 Cl. & Fin. 48, cited by Parke, B., in *Jefferys v. Boosey*, 4 H. L. C. at p. 926.

(*h*) *Wallace v. Att.-Gen.*, L. R. 1 Ch. 1; see *Att.-Gen. v. Campbell*, L. R. 5 H. L. 524.

(*i*) *Ex parte Blain, Re Sawers*, L. R. 12 Ch. D. 522.

(*k*) *Bulkeley v. Schutz*, L. R. 3 P. C. 764.

(*l*) *Cope v. Doherty*, 4 K. & J. 367; 2 De G. & J. 614.

(*m*) *Clementi v. Walker*, 2 B. & C. 861; *Jefferys v. Boosey*, 4 H. L. C. 815.

(*n*) *Routledge v. Low*, L. R. 3 H. L. 100.

things, we find that the Acts against stockjobbing were held to apply only to dealings in English stock (*o*). The Act 4 & 5 Wm. IV. c. 63, which rendered wholly null and void any sale made according to certain weights and measures, the use of which was abolished by that Act, did not affect an agreement for the supply of goods on the coast of Africa according to those weights and measures (*p*). A still more remarkable case was that in which it was held that, although the slave-trade was rendered unlawful by statute, a foreigner might sue in an English Court for the value of a cargo of slaves which had been taken from him (*q*).

Does not
bind future
Parliaments.

Another limitation yet must be imposed upon the authority of Acts of Parliament. They cannot insure themselves against repeal, or provide for their own continuance. All Parliaments have equal powers, and therefore each successive Parliament can undo the work of its predecessors. "Acts against the power of the Parliament subsequent bind not. The latter Parliament hath ever power to abrogate, suspend, qualify, explain or make void the former in the whole or any part thereof, notwithstanding any words of restraint, prohibition or penalty in the former" (*r*). One of the early statutes provided that all Acts contrary to Magna Charta should be void, yet parts of Magna Charta have been repealed and parts have

(*o*) *Wells v. Porter*, 2 Bing. N. C. 722; 3 Scott, 141; *Oakley v. Rigby*, 2 Bing. N. C. 732; 3 Scott, 194.

(*p*) *Rosseter v. Cahlmann*, 8 Ex. 361.

(*q*) *Madrado v. Willis*, 3 B. & Ald. 353.

(*r*) 4 Inst. 42, 43.

been altered by subsequent Acts, the authority of which has never been questioned (s). Blackstone cites upon this subject a passage from Cicero's letters to Atticus: "When you repeal the law itself, you at the same time repeal the prohibitory clause which guards against such repeal" (t).

These limitations upon the authority of statutes are not imposed by Parliament itself, or by the Courts of Justice, or by any other human agency, but exist in the very nature of things. The authority of an Act of Parliament extends so far only as the Act is capable of being enforced. Although the Courts of Law which have the power, and are under the obligation, of enforcing statutes, exercise that jurisdiction over all persons within the realm, they cannot go beyond their territorial limits, exact obedience from inanimate things, or restrain the action of a new Parliament. Nor will the Courts give effect to the authority of statutes by enforcing them indirectly in cases where they cannot be enforced directly. Thus if a statute commands the performance of an act which is impossible, or attaches to the performance of an act conditions which cannot be fulfilled, the Courts will not punish the person who fails to perform the act, or will allow him to perform it without conditions. To these cases the maxim applies *lex non cogit ad impossibilia*. One such case arose under the Common Law Procedure Act, 1854. Sect. 50 of that Act provided that discovery of documents might be ordered by the Court "upon an affidavit

Does not
extend to
impossibilities.

(s) *Dwarris*, 2nd edit., 479.

(t) 1 *Blackstone's Commentaries*, 91; 1 *Stephen*, 6th edit., 84.

by either party to the cause." It was held that where an action was brought against a corporation, as it was physically impossible for a corporation to make an affidavit, discovery might be granted upon an affidavit by the defendant's attorney (*u*). Again, where by statute an appellant was required to give notice to the respondent that he had entered into a recognisance to prosecute his appeal, and the death of a respondent made it impossible for such notice to be given, it was held that the appellant was excused from compliance with the statute (*x*).

The restrictions which the judges of earlier days attempted to place upon the authority of statutes have been discussed already. We have seen that, while their predecessors claimed a right to control the action of the Legislature, modern judges confine themselves to the exercise of their legitimate functions as exponents of the law which has been expressed by Parliament. Yet even while they properly exercise this function, the Courts restrict to a material degree the authority of statutes.

Limited
by the
necessity
of using
express
words.

In certain instances the use of express words is considered necessary for the purpose of giving full effect to a statute, and in their absence the authority of the statute is so limited as to lose all its weight with that class or those persons for whose benefit the presumption has been created.

Express
words
needed to

This principle applies most forcibly to the case of the Crown. It has always been held in modern

(*u*) *Kingsford v. G. W. Rail. Co.*, 16 C. B. N. S. 761 ; 33 L. J. C P. 307.

(*x*) *R. v. Leicestershire Justices*, 15 Q. B. 88.

as well as in ancient times, that the Crown is not ^{bind the} bound by any statute unless it is expressly named. ^{Crown.} When we examine more closely into the rule we find indeed that it admits of numerous exceptions, and that the Crown is not only bound by statutes of certain kinds, though it is not named in them, but is also bound by all statutes in which it is included by necessary implication. Yet the rule itself cannot now be questioned, recognised as it has been by judicial authority in all ages, accepted not only under the Tudors and the Stuarts, but by the American Republic (*y*). "It is a well-established rule, generally speaking, in the construction of Acts of Parliament, that the King is not included unless there be words to that effect; for it is inferred *primâ facie* that the law made by the Crown, with the assent of Lords and Commons, is made for subjects and not for the Crown" (*z*).

Whatever may be the true reason for the adoption of this rule it may be illustrated by a variety of examples. Thus the Crown is not bound by Statutes which impose tolls (*a*), nor by the Statutes as to rating (*b*), nor by the Act of the 31 Elizabeth (*c*. 12) as to sales in market overt (*c*), nor by Acts which in general terms divest any royal pre- ^{In what cases the Crown is not bound unless named.}

(*y*) *U. S. v. Greene*, 4 Mason, 427, *per* Story, J.; *Stoughton v. Baker*, 4 Mass. 522, 528; *U. S. v. Hoare*, 2 Mason, 311; *U. S. v. Hewes*, Crabbé, 307.

(*z*) *Att.-Gen. v. Donaldson*, 10 M. & W. at pp. 123, 124, *per* Alderson, B., citing *Willion v. Berkley*, Flowl. 223, 236.

(*a*) *Mayor of Weymouth v. Nugent*, 6 B. & S. 22; *R. v. Cook*, 3 T. R. 519.

(*b*) *Jones v. Mersey Docks*, 11 H. L. C. at pp. 501—3, *per* Lord Westbury; *R. v. McCann*, L. R. 3 Q. B. at p. 145.

(*c*) 2 Inst. 713.

rogative, right, title, or interest (*d*), nor by the Lands Clauses Act (*e*), nor by the Statutes of Limitations (*f*). Statutes which regulate the procedure of the Courts of Law and the administration of justice do not affect the rights of the Crown. It is not bound by chap. 11 of Magna Charta, which says, "Common pleas shall not follow our Court;" and it was therefore held that the Sovereign might sue in the King's Bench for a debt (*g*). It is not bound by the Act of the 14 Edw. III. c. 6, which allows an amendment to be made in any process as soon as a mistake "is perceived by the challenge of the party" (*h*). Nor do the statutes which allow defendants to plead several matters extend to proceedings taken at the instance of the Crown (*i*); so that only a single plea was allowed in answer to an information of intrusion (*k*), and to a *quare impedit* where the Crown was plaintiff (*l*). The Acts which take away the right of removing indictments or convictions by *certiorari* do not apply to the Crown unless it is expressly named (*m*).

The Crown is not bound by the Common Law

(*d*) Bac. Ab. Prerogative (E. 5).

(*e*) *Re Cuckfield Burial Board*, 19 Beav. 153.

(*f*) *Magdalen College Case*, 11 Rep. at 68b; *Att.-Gen. v. Magdalen College*, 18 Beav. 223.

(*g*) *Willion v. Berkley*, Plowd. 223.

(*h*) *R. v. Tutchin*, 2 Ld. Raym. 1061, 1066.

(*i*) *Att.-Gen. v. Donaldson*, 7 M. & W. 422.

(*k*) *Att.-Gen. v. Allgood*, Parker, at p. 15.

(*l*) *R. v. Archbishop of York*, Willes, 533.

(*m*) *R. v. Cumberland*, 6 T. R. 194, 3 B. & P. 354; *R. v. Allen*, 15 East, 333; *R. v. Davies*, 5 T. R. 626; *R. v. Boulthbee*, 4 A. & E. 498.

Procedure Act, 1852 (*n*), nor by the County Court Act, 1846 (*o*), nor by Acts giving costs to a successful party (*p*), nor by the Judicature Act, 1873, so as to lose its right of having revenue cases determined in that Division of the High Court of Justice to which the jurisdiction of the Court of Exchequer has been assigned (*q*). It is not bound by the Companies Act, 1862, and is therefore entitled to distrain for income-tax after the commencement of a winding up, and to exact payment in priority to other creditors of the amount due for income-tax (*r*). Although named in parts of the Bankruptcy Act, 1869, it is not bound by the sections which give the title of the trustee of a liquidating debtor relation back to the filing of the petition, and the debtor's property therefore remains subject to an extent issued by the Crown between the filing of a petition and the appointment of a trustee (*s*).

In all these cases it has been held that the Crown is not bound, because it has not been named in the particular statute. At other times, however, it has been held that the Crown may be included in the provisions of a statute by necessary implication. Thus, where the Act 7 Hen. IV. c. 4, provided that protection should not lie for a warden of a prison if an action of debt for the

When the Crown is bound by necessary implication.

(*n*) *Arding v. Holmer*, 1 H. & N. 85.

(*o*) *Mountjoy v. Wood*, 1 H. & N. 58.

(*p*) *R. v. Beadle*, 7 E. & B. 492; *Atkinson v. Queen's Proctor*, L. R. 2 P. & D. 255.

(*q*) *Att.-Gen. v. Constable*, L. R. 4 Ex. D. 172.

(*r*) *Re Henley & Co.*, L. R. 9 Ch. D. 469.

(*s*) *Ex parte Postmaster-General, re Bonham*, L. R. 10 Ch. D. 595.

escape of a prisoner was brought against him, it was held that as the Crown alone could grant this protection, the Act bound the Crown and prohibited any such exercise of its prerogative (*t*). Again, it was held that an implied negative in a statute limited the rights which the Crown possessed at Common Law. The Act of the 33 Hen. VIII. c. 39, s. 74, provided that the King should have execution against any defendant before any other person, "so always that the King's said suit be taken and commenced before judgment given for the said other person." It was decided that this statute abridged the prerogative and controlled the Common Law, so that the Crown was no longer entitled to priority of execution where the right of a subject was vested by reason of his having obtained a judgment (*u*).

When the Crown is bound though not named.

It is not easy to discover any method of defining or classifying those statutes which bind the Crown without express words, and which, therefore, form the exceptions to the general rule.

In one place it is said that the Crown is bound, even when it is not named, by all statutes which are passed with the object of suppressing wrong, of taking away fraud, or of preventing the decay of religion (*x*). An Act made to suppress wrong and advance right, like Westminster the Second, c. 5, concerning advowsons, or the 32 Hen. VIII. c. 28, concerning discontinuances, binds the King though

(*t*) *Brooke's Abridgment*, tit. Parliament, pl. 30, citing 39 Hen. VI. c. 39.

(*u*) *Att.-Gen. v. Andrew*, Hardress, at p. 27, *per* Parker, B.

(*x*) *Case of Ecclesiastical Persons*, 5 Rep. 14a.

he be not named, because "the King being God's lieutenant can do no wrong" (*y*). "Where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the King shall be bound by such Act though not named" (*z*). And as the Crown is bound by an Act passed for the further advancement of justice, if such an Act uses terms so comprehensive as to include all cases brought up by writ of error, criminal cases will not be excepted on the ground that the Sovereign as public prosecutor is not expressly mentioned (*a*). On the same ground it was held that the Act 11 Geo. IV. & 1 Wm. IV. c. 70, making writs of error returnable in the Exchequer Chamber, bound the Crown, and that a writ of error lay to the Exchequer Chamber in a case where the Crown was party to a suit (*b*). Again, the Crown is bound by the general provisions of Magna Charta (*c*), by the Act *de donis*, Westminster the Second (13 Edw. I.), c. 1 (*d*), by an Irish Act for the consolidation of endowed rectories and vicarages (*e*), by the Statute of Marlbridge (52 Hen. III.), c. 22, which provides that "none from henceforth may distrain his freeholders to answer for their freeholds nor for any things touching their freeholds without the King's writ" (*f*).

(*y*) 2 Inst. 359, 681.

(*z*) Bac. Ab. Prerogative (E. 5).

(*a*) *R. v. Wright*, 1 A. & E. 434.

(*b*) *Baron de Bode v. The Queen*, 13 Q. B. 364.

(*c*) 2 Inst. 77, 108.

(*d*) *Willion v. Berkley*, Plowd. 223.

(*e*) *R. v. Abp. Armagh*, 1 Str. 516, 8 Mod. 6.

(*f*) 2 Inst. 142.

The Crown is bound by the Statute Westminster the First, c. 5, as to free elections, of which Lord Coke says: "The Act is penned in the name of the King, viz., the King commandeth, and therefore the King bindeth himself not to disturb any electors to make free election, as in the like case upon a statute made in the reign of the said King, the Act saying *rex perpendens*, the same bound the King" (g). We may find it difficult to reconcile some of these cases with the general principle, and it will occur to many that if a mere allusion to the authority of the Sovereign, if the fact that a statute has been passed with an intention which underlies all statutes, would suffice to bind the Crown, the necessity for express words dwindles to nothing. Still, we must take both the rule and the exceptions to it as we find them, and as they have been established by a long series of decisions.

Express words needed to take away jurisdiction of Superior Courts.

The rule which requires express words in other cases is more flexible than it is in the case of the Crown, and is more readily capable of being modified by such an implication as is necessary to give effect to any particular statute. The jurisdiction of the Superior Courts of law "can only be taken away by express words, or, perhaps, by a necessary implication which must be intended of the use of such words as are absolutely inconsistent with the exercise of a jurisdiction by the Superior Courts, and to which effect cannot be given but by the exclusion of such a jurisdiction" (h). This rule

(g) 2 Inst. 169.

(h) *R. v. Mayor of London*, 9 B. & C. at p. 27; *Shipman v. Hen-*

applies not only to the original jurisdiction of the Superior Courts, but also, and even more forcibly, to the jurisdiction which they exercise over inferior Courts by means of the writ of *certiorari*. It was laid down by Lord Mansfield that nothing but express negative words could take away this jurisdiction (*i*). Words giving final authority and determination to justices (*j*), or to the sessions (*k*), do not take away the writ of *certiorari*; nor does a provision that no *certiorari* shall supersede any execution (*l*), nor that "no other Court whatsoever shall intermeddle with any cause or causes of appeal under this Act, but they shall be finally determined in the Quarter Sessions only" (*m*). To take away writ of *certiorari*.

The same words which are needed to take away the writ of *certiorari* are needed to give an appeal (*n*), and no such right can be given by implication, as by a form in the schedule to an Act containing the words "unless upon an appeal against the same to be then made" (*o*), or by reference to other Acts, which allow an appeal (*p*). To give an appeal.

But if the words of reference are such as to amount to incorporation or re-enactment, they may give an appeal as they may take away *certiorari*.

best, 4 T. R. 109, *per* Ashhurst, J. See, too, *Balfour v. Malcolm*, 8 Cl. & Fin. at p. 500, *per* Lord Campbell.

(*i*) *R. v. Abbot*, 2 Dougl. at p. 555.

(*j*) *R. v. Plowright*, 3 Mod. 95.

(*k*) *R. v. Jukes*, 8 T. R. at p. 544.

(*l*) *R. v. Berkley*, 1 Kenyon, 80.

(*m*) *R. v. Moreley*, 2 Burr. 1041.

(*n*) *Att.-Gen. v. Sillem*, 10 H. L. C. 704.

(*o*) *R. v. Stock*, 8 A. & E. 405.

(*p*) *R. v. Surrey Justices*, 2 T. R. 504.

Where the 42 Geo. III. c. 73, which limited the hours of work for children in factories, imposed certain penalties, and provided that no conviction under the Act should be removed by *certiorari*, and the 6 Geo. IV. c. 63, referring to that Act, provided that all the powers, provisions, &c., contained in it should be "as good, valid, and effectual for carrying this Act into execution" as if the same had been repeated and re-enacted, it was held that a conviction under the later Act could not be removed by *certiorari* (*q*).

To take
away right
of chang-
ing *venue*.

For the same reasons which led the judges of an earlier time to say, "we will not suffer this Court to be excluded from its jurisdiction by obscure words in the statute" (*r*), it has been held that very strong words were needed to take away the Common Law rights of the Superior Courts to change a *venue*. Words which were not sufficient for that purpose were contained in the Public Health Act, 1848 (11 & 12 Vict. c. 63); section 139 of which provided that certain actions should "be laid and tried in the county or place where the cause of action occurred, and not elsewhere" (*s*). A very sound and excellent rule on this subject is laid down by Lord Cranworth: "Whenever the Legislature imposes restrictions or regulations on the action of the Superior Courts, it is not unreasonable to say that its language must be looked to with a strong inclination to construe it in

(*q*) *R. v. Fell*, 1 B. & Ad. 380.

(*r*) *Hill and Dechair*, Styles at p. 382.

(*s*) *Southampton Bridge Co. v. Local Board of Southampton*, 8 E. & B. at p. 804.

the mode best calculated to promote obvious justice" (*t*).

Differences of opinion have existed with regard to statutes which confer jurisdiction upon justices of the peace or arbitrators, and the question has more than once arisen whether such jurisdiction is concurrent with that of the Superior Courts or exclusive. It was held that the Act, 43 Geo. III. c. 99, providing that any question or difference which arose upon taking any distress should be determined by the Commissioners of Taxes, did not affect the right to bring an action in one of the Superior Courts for a wrongful distress (*u*). But where an Act which imposed penalties of £50 and £10 enacted that the former penalty might be sued for in any of the Courts at Westminster, while as to the latter it should be lawful for any justice of the peace to impose it or to mitigate it, the Court held that its jurisdiction was ousted in the case of the smaller penalty (*x*). It would be more correct to say in this case, as was said by Patteson, J., in another, "not that the jurisdiction of the Superior Court is thus taken away; that jurisdiction never arises" (*y*). As the Act which created the offence provided also the penalty, the only method by which it could be exacted was that prescribed by the statute. The case of the Savings Banks Act, 9 Geo. IV. c. 92, affords a better illustration. Section 45 of that Act, providing that if

Decisions as to the creation of exclusive jurisdictions.

(*t*) *Ralston v. Hamilton*, 4 Macqueen, at p. 408.

(*u*) *Earl of Shaftesbury v. Russell*, 1 B. & C. 666.

(*x*) *Cates v. Knight*, 3 T. R. 442.

(*y*) *Timms v. Williams*, 3 Q. B. at p. 423.

any dispute arose the matter should be referred to arbitrators, was held sufficient to oust the jurisdiction of the Superior Courts (z). "Looking at the object and intention of the Legislature," says Tindal, C.J., in that case (a), "we think it clear that the remedy by action is taken away, and that by arbitration substituted in its place. The Legislature contemplated the cheap, simple, speedy, and equitable adjustment of all disputes by a reference in the mode pointed out in the Act instead of a more expensive, dilatory, and uncertain remedy by action at law." The same principle was applied to the case of building societies (b). In like manner it was held that the jurisdiction of the Ecclesiastical Courts was incidentally taken away by a proviso in the 53 Geo. III. c. 127, s. 7. That Act gave two justices power to order payment of a rate not exceeding £10, the validity of which had not been questioned in any Ecclesiastical Court: "provided that nothing herein contained shall extend to alter or interfere with the jurisdiction of the Ecclesiastical Courts to hear and determine causes touching the validity of any church rate or chapel rate, or from proceeding to enforce the payment of any such rate if the same shall exceed the sum of £10." It was considered that the effect of this proviso, coupled with the words which gave jurisdiction to justices of the peace in one particular case, was to deprive the Ecclesiastical Courts of the power of

(z) *Crisp v. Bunbury*, 8 Bing. 394.

(a) At pp. 400, 401.

(b) *Reeves v. White*, 17 Q. B. 995.

enforcing an undisputed rate for a sum not exceeding £10 (*c*).

The Act of the 5 & 6 Wm. IV. c. 23, for the establishment of loan societies, gave rise to a serious difference of opinion between the Courts of Queen's Bench and Common Pleas. The eighth section of the Act empowered and required a justice of the peace to hear and determine any complaint made of a failure in the repayment of any loan. The Queen's Bench held that this remedy was exclusive, and that no action could be brought by the treasurer of such a society (*d*). The Common Pleas held that the jurisdiction of the Superior Courts was not ousted, and that an action might be brought by the trustees of such a society (*e*). In the first case Lord Denman, C.J., said (*f*): "The Legislature has thought it useful to withhold the power of instituting expensive suits in the Superior Courts, and to appoint a domestic power to settle those small disputes which a society of this kind is likely to be engaged in." We turn to the second case, and there we find very different words used by Tindal, C.J.: "There are no exclusive words in the statute under consideration, and it is perfectly clear, therefore, that the jurisdiction of the Superior Courts is not taken away" (*g*).

Public or private rights cannot be affected in the absence of express words or necessary implications. Express words needed

(*c*) *Richards v. Dyke*, 3 Q. B. 256.

(*d*) *Timms v. Williams*, 3 Q. B. 413.

(*e*) *Albon v. Pyke*, 4 M. & G. 421.

(*f*) *Timms v. Williams*, 3 Q. B. at p. 422.

(*g*) *Albon v. Pyke*, 4 M. & G. at p. 426.

to affect
public or
private
rights.

tion. A public right of way may indeed be extinguished by an Act of Parliament, but only "when the Legislature clearly and distinctly authorise the doing of a thing which is physically inconsistent with the continuance" of such a right (*h*). It was held in the United States that an authority to construct a railway between certain points did not warrant the appropriation of an existing public highway for that purpose. The authority to lay the railroad along the highway could only be granted by express words or necessary implication; but there would be sufficient ground for such an implication if the railroad could not reasonably be laid in any other line (*i*). So, too, express words or necessary implication are needed to take away vested rights (*k*), or a benefit that has vested (*l*), or to divest an estate (*m*), or interfere with the rights of individuals (*n*), or trench upon the Common Law rights of an owner in respect of his enjoyment of his property (*o*), or to cut down, abridge, restrain, or avoid any written instrument (*p*). As it is an essential principle of natural justice that no man's

(*h*) *Corporation of Yarmouth v. Simmons*, L. R. 10 Ch. D. 518, 527, per Fry, J.

(*i*) *Springfield Inhabitants v. Connecticut River Railroad Co.*, 4 Cushing, 63.

(*k*) *Randolph v. Milman*, L. R. 4 C. P. 107, 113; *Farran v. Ottiwell*, 2 Jebb & Symes, Irish Q. B. at p. 109.

(*l*) *R. v. Birmingham Canal Co.*, 2 B. & Ald. 570, 579.

(*m*) *Churchwardens of Deptford v. Sketchley*, 8 Q. B. 394.

(*n*) *Harrod v. Worship*, 1 B. & S. 381.

(*o*) *R. v. Mallow Union*, 12 Ir. C. L. R. 35; *Shaw v. Ruddin*, 9 Ir. C. L. R. 214.

(*p*) *Morris v. Mellin*, 6 B. & C. at p. 449, per Lord Tenterden, C.J.; at p. 450, per Bayley, J.

person or property should be affected without his being heard, this natural right cannot be taken away without express words, and an Act which empowered a district board to pull down certain buildings did not authorise it so to act without first hearing the person aggrieved (*q*). And as each person's right to the enjoyment of his own property is guarded in like manner, it has been held that the Metropolitan Building Act, giving the owner of a house the right to raise any party structure upon condition of his making good all damage occasioned thereby to the adjoining premises, did not authorise him to obstruct the ancient lights of his neighbour (*r*). An attempt was once made to extend to the Divorce Act, 20 & 21 Vict. c. 85, the rule which has now been discussed, and to suggest that marriage could not be dissolved without express words. It was argued with some courage that, as the words of the Act were only, upon the petitioner's case being established "the Court shall pronounce a decree declaring such marriage to be dissolved," and there was no provision that "thereupon the marriage shall be dissolved accordingly," the decree was ineffectual, and there was no dissolution of the marriage. But the Vice-Chancellor to whom this argument was addressed declined to accede to it, or to deprive the Act of Parliament of all effect and meaning (*s*).

Where the rule which requires express words does not apply, the authority of statutes is often

When authority of statutes is

(*q*) *Cooper v. Wandsworth Board of Works*, 14 C. B. N. S. 180.

(*r*) *Crofts v. Haldane*, L. R. 2 Q. B. 194.

(*s*) *Wilkinson v. Gibson*, L. R. 4 Eq. 162.

extended
by impli-
cation.

extended by implication. A power may be given or a duty imposed by inference where it is clear that a full effect could not otherwise be given to the provisions of the statute. *Quando lex aliquid concedit, conceditur et id sine quo res ipsa esse non potest (t)*. "In statutes incidents are ever supplied by intendment" (*u*). Thus where an act is made felony by statute, all the Common Law incidents of felony attach to it without being particularly specified (*x*). The Statute of Gloucester, c. 5, which gives an action of waste against tenant for life and tenant for years, gives an implied authority to the reversioner to enter and see if any waste has been done (*y*). A statute which gives a justice of the peace jurisdiction over an offence, gives him also an implied power to issue a warrant against a person accused of its commission (*z*). On the same principle, when authority is given to the Superior Courts they receive by implication all the powers which are necessary for its exercise. Thus a power given to one of the Superior Courts may be exercised by a judge at Chambers (*a*), and a power which is to be exercised by a judge of the Court in which an action is brought may be exercised by a judge of another Court sitting at Chambers for all the Courts (*b*). So, too, when the Act, 53 Geo. III.

(*t*) Oath before Justices, 12 Rep. 131.

(*u*) 2 Inst. 222.

(*x*) *R. v. Sadi*, 1 Leach, C. C. at p. 472, 2 East, P. C. at p. 743, per Gould and Ashhurst, JJ.

(*y*) 2 Inst. 306.

(*z*) *Bane v. Methuen*, 2 Bing. 63.

(*a*) *Smeeton v. Collier*, 1 Ex. 457.

(*b*) *Owens v. Woosman*, L. R. 3 Q. B. 469; 9 B. & S. 243.

c. 24, empowered a Vice-Chancellor to do all that might be done by the Lord Chancellor, and afterwards certain powers were conferred on the Lord Chancellor by the 2 & 3 Vict. c. 54, it was held that these powers might be exercised by a Vice-Chancellor (c). If, however, a special power is given to one Court by name that power will not be extended to another (d). In some cases an implied authority has been given to justices of the peace either to hear a complaint or to inflict a penalty. Thus an Act for the relief of the poor provided that any person who was aggrieved by certain rates or assessments might apply to two justices, and if not relieved should be obliged to pay, but might afterwards appeal to the Quarter Sessions. It was held that this clause by implication gave two justices power to hear any such complaint by a person aggrieved, and to relieve the complainant (e). So it was held that the Contagious Diseases (Animals) Act, 1870, gave justices an implied authority to punish the offences which that Act created. One section provided that a person guilty of an offence against the Act should be liable to a penalty. A second section enacted that a person should be deemed guilty of an offence unless he showed, to the satisfaction of the justices before whom he was charged, that he did not know of the animal being diseased. A third section gave an appeal from justices (f). Other instances of implied powers or

(c) *Re Taylor*, 10 Simons, 291.

(d) 2 Inst. 114.

(e) *R. v. St. James's, Westminster*, 2 A. & E. 241.

(f) *Cullen v. Trimble*, L. R. 7 Q. B. 416.

duties may be found in the cases which decide that a right to compensation may be inferred in the absence of express words (*g*), that pilotage may be rendered compulsory by words which impose a penalty if a vessel sails without a pilot (*h*), that where power was given to the governor of a colony to forward passengers to their original destination, if the master of the ship in which they had taken their passage declined or omitted to forward them, the duty of forwarding such passengers was imposed on the master (*i*).

When not. Yet the authority of statutes is not extended by implication to all things which might possibly have been contemplated by the Legislature, and which may even be considered the fair and logical consequences of an enactment. The object of such extension is to give full effect to the statute, but this must be done in conformity with the general rules of construction, and new words must not be added, nor must existing words be strained, for the purpose of carrying out a supposed intention. If effect can be given to the actual words of the statute the Court can go no further, although a wider and more sensible effect could be given to the statute by the addition of a single sentence, and although in all probability that sentence would have been added if it had been suggested to the Legislature. Acting on this principle, the Courts have, in several cases, declined to extend the authority of statutes beyond the language used by their framers. Thus

(*g*) *R. v. St. Luke's, Chelsea*, L. R. 6 Q. B. 572, 7 Q. B. 148.

(*h*) *Redpath v. Allen*, L. R. 4 P. C. 511.

(*i*) *Gibson v. Bradford*, 4 E. & B. 586.

where 5 Eliz. c. 4, s. 35, empowered justices to discharge an apprentice of his apprenticeship, it was held that the justices could not order his master to return any part of the premium (*k*). The Bankruptcy Act, 1861, provided that it should be sufficient if a debtor obtained a certain number of assents to a composition deed, and gave a form of deed in the schedule which, however, did not contain a release. It was held that such deed could not be pleaded in bar, even to an action brought by an assenting creditor (*l*). An Act authorised the Bradford Navigation Company to take the water of the Bradford Beck for their canal. The water was so foul that the canal became a public nuisance. It was held that the Navigation Company was indictable (*m*). The 1 & 2 Vict. c. 110, s. 18, enacted that all rules of Court by which money should be payable to any person should have the effect of judgments. The Common Law Procedure Act, 1854, gave creditors who had obtained a judgment the right to attach money in the hands of a garnishee. It was held that this remedy was not given to a person who had obtained a rule for the payment of money, as such a rule was not a judgment, but only had the effect of a judgment (*n*).

The reluctance shown by the Courts to extend the authority of statutes by implication is more strongly marked when any principle of the Common

(*k*) *East v. Pell*, 4 M. & W. 665, following *R. v. Vandeleer*, 1 Str. 69.

(*l*) *Eyre v. Archer*, 16 C. B. N. S. 638 ; *Jones v. Morris*, 6 B. & S. 198.

(*m*) *R. v. Bradford Navigation Co.*, 6 B. & S. 631.

(*n*) *Re Frankland*, L. R. 8 Q. B. 18.

Law would be affected by such an extension. Thus, where an Act of the 7 Jac. I. c. 12, enacted that shop-books should not be evidence above one year before action, it was said by Holt, C.J., that this Act did not make shop-books evidence of themselves within the year (*o*). So an Act providing that a wife should not be competent to give evidence for her husband in criminal cases did not enable her to give evidence on his behalf in civil cases (*p*). So, too, a provision that a conveyance made in a certain form should be valid did not cure any defects in the title (*q*). So where certain Acts prescribed forms of notice to be printed on indentures of apprenticeship, or served upon persons accused of an offence, and such notices stated that certain consequences would follow if the indentures were untruly stated, or if the person accused of receiving stolen goods did not negative guilty knowledge, it was held that the mere statement of these consequences in the notices without enacting words in the body of the Acts, was not sufficient either to avoid a written instrument or shift the burden of proof in a criminal case (*r*).

Authority
must be
strictly
followed.

The authority of statutes must be strictly followed. Whether a power be granted to the holders of the highest offices of State, to the Superior Courts of Law or Equity, to public bodies, to companies incorporated for special pur-

(*o*) *Pitman v. Maddox*, 2 Salk. 690.

(*p*) *Barbat v. Allen*, 7 Ex. 609.

(*q*) *Ward v. Scott*, 3 Camp. 284.

(*r*) *R. v. Harrington, Inhabitants*, 4 A. & E. 618 ; *R. v. Davis*, L. R. 1 C. C. R. 272.

poses, to trustees, or to private persons, the provisions of the Act which creates the power are imperative, and must be implicitly obeyed. "However high the authority may be where a special statutory power is exercised, the person who acts must take care to bring himself within the terms of the statute" (*s*). This principle is especially applicable to all cases in which any new jurisdiction is conferred upon the Courts of Justice, or a new procedure is devised, either for the purpose of enforcing private rights or of punishing offences. "If a new offence," says Lord Mansfield, "is created by statute, and a special jurisdiction out of the course of the Common Law is prescribed, it must be followed. If not strictly pursued all is a nullity and *coram non jndice*" (*t*). A recent case supports this proposition. The Public Worship Act, 1874 (37 & 38 Vict. c. 85, s. 9), gave power to the Archbishop to refer certain matters to the judge appointed under that Act, and to require him to hear those matters at any place within the diocese or province or London or Westminster. Where the judge was required by the Archbishop to hear a matter within the diocese or London or Westminster, and did hear it within the province, it was held that the proceedings before him were invalid (*u*). So, too, where the Commissioners of Bankruptcy were empowered by statute to commit a person to prison "till he submit himself to be by them examined," and they committed a man "till

Where a new jurisdiction is conferred.

(*s*) *Christie v. Unwin*, 11 A. & E. at p. 379, *per* Coleridge, J.

(*t*) *Hartley v. Hooker*, 2 Cowp. at p. 524.

(*u*) *Hudson v. Tooth*, L. R. 3 Q. B. D. 46.

he conform himself to our authority," their warrant was avoided (x). So, too, where an Act provided that a prisoner under sentence of Court martial should be confined in the prison appointed by the officer commanding the district, and that his prison might be changed by the same authority, it was held that the Commander-in-Chief in England had no power to prescribe the place of confinement of a prisoner, who, in pursuance of the Act, had been first confined in India, and had then been sent to England (y).

These cases may be thought exceptional as relating to the liberty of the subject, but the rule applies to civil as well as to criminal process. Thus where an Act empowered the Court of Chancery to order the payment of money upon petition, it was decided by Lord Eldon that the Court had no jurisdiction to make the order on motion (z). Where the Court was directed to enter up judgment in favour of a plaintiff for the sum specified in a certificate from the Speaker of the House of Commons, it was held that the costs of the rule for entering up judgment could not be added to the amount specified by the certificate (a). The 3 Wm. & Mary, c. 14, made the devisee chargeable jointly with the heir for the debts of the testator in respect of lands devised to him, and enacted that specialty creditors of such testators should have an action of debt

(x) *Bracy's Case*, 1 Salk. 348.

(y) *Re Allen*, 3 E. & E. 338.

(z) *Baynes v. Baynes*, 9 Vesey, 462. See, too, *Taylor v. Taylor*, L. R. 1 Ch. D. at p. 431, *per* Jessel, M.R.

(a) *Ranson v. Dundas*, 3 Bing. N. C. 556.

upon bonds and specialties. It was held that an action of covenant did not lie under the statute, as the remedy given was specific, and could not be extended to an action for damages for a breach of covenant on the part of the testator (*b*). The Common Law Procedure Act, 1854, s. 50, enabled the Courts to order discovery of the documents in the possession of either party upon an affidavit by the other party. It was held that the authority which was thus given to the Court must be strictly followed, and that discovery could not be ordered upon an affidavit made by the attorney for either party, even when his client was abroad (*c*).

The same strictness must be observed where the authority granted affects matters of public interest or the discharge of public duties. Thus, the authority given to a bishop to decide whether the duties of a parish are adequately or inadequately performed must be strictly pursued (*d*). Where an Act which gives authority to a person describes him by his official name, the enactment applies only within the limits of his office, and the authority given to him is confined to those limits. Thus, where presentment of a highway might be made, "upon information given by any surveyor of the highways," it was held that this information could only be given by the surveyor of highways for the parish or place within which the highway was situated (*e*). Questions affecting the boundaries of

Where
matters of
public in-
terest are
concerned.

(*b*) *Wilson v. Knubley*, 7 East, 128.

(*c*) *Christopherson v. Lotinga*, 15 C. B. N. S. 809 ; 33 L. J. C. P. 121.

(*d*) *Capel v. Child*, 2 Cr. & Jer. 558.

(*e*) *R. v. Fylingdales, Inhabitants*, 7 B. & C. 438, 440.

parishes are governed by the same rule, and a special power given to commissioners to fix and settle these boundaries must be strictly followed. Where commissioners were to advertise the boundaries in a newspaper and insert them in their award, upon which the boundaries so fixed and settled were to be final, binding and conclusive, and the boundaries advertised differed from those specified in the award, it was held that the special power had not been followed, and the award was not final (*f*). So, too, the power of appointing overseers must be strictly followed, and where the 43 Eliz. c. 2, required the appointment of four, three, or two substantial householders, the appointment of one householder was held to be void, although he was the only one residing in the parish (*g*). So, too, the special power given by 9 Geo. IV. c. 40, s. 38, for the removal of lunatic paupers from a parish to the county lunatic asylum must be strictly followed. The Act provided that if no county lunatic asylum had been established, lunatics might be removed to some licensed hospital or house. It was held, however, that this power could not be exercised where a county lunatic asylum had been established, although it was too full to hold another inmate (*h*). So, where the 56 Geo. III. c. 139, s. 11, required indentures of apprenticeship of poor children to be approved by justices under their hands and seals, it was held that the signature of the

(*f*) *R. v. Washbrook, Inhabitants*, 4 B. & C. 732.

(*g*) *R. v. Cousins*, 4 B. & S. 849.

(*h*) *R. v. Ellis*, 6 Q. B. 501.

justices was not sufficient (*i*). The Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 149), enacted, that whenever the sanction of the Local Board of Health was required, it should be given in writing under the seal of the Local Board and the hands of five of its members. It was held that a rate made and published without any such seal or signatures was invalid (*k*). The rule extends to contracts made by persons in a representative capacity. The Public Health Act, 1848, required all contracts entered into by a local board to be in writing and sealed with the seal of the board, and the Court refused to enforce a contract which did not comply with these conditions (*l*). Where a railway company was authorised by a special Act to raise money by mortgage, it was not entitled to borrow in any other way, and therefore a Lloyd's bond given by it was void (*m*). An Act authorised incumbents to grant leases at a quarterly rent. This provision was considered imperative, and the Court refused its sanction to a lease of glebe land, the rent of which was made payable half-yearly (*n*).

Where a statute authorises an interference with private rights of property, its provisions are jealously watched, and must be followed with precision. Persons who interfere with private property, under the authority of an Act for public purposes, are strictly tied down to the powers and limits

Where
statute
authorises
an interference
with
private
property.

(*i*) *R. v. Stoke Damerel*, 7 B. & C. 563.

(*k*) *R. v. Workshop Local Board*, 5 B. & S. 95.

(*l*) *Frend v. Dennett*, 4 C. B. (N. S.) 576; *Hunt v. Wimbledon Local Board*, L. R. 3 C. P. D. 208; 4 C. P. D. 48.

(*m*) *Chambers v. Manchester and Milford Ry. Co.*, 5 B. & S. 588.

(*n*) *Jenkins v. Green*, 27 Beav. 440.

prescribed by the Act (*o*), and are not to be guided by any fancied view of the spirit of the Act which enforces such powers (*p*). Thus, where searchers of leather were authorised to seize all leather insufficiently dried, it was held that they could only seize such leather as actually came under that denomination, and not such as, in their judgment, was liable to seizure (*q*). Where a statute provided that a messenger in bankruptcy should not be liable to an action for anything done by him in obedience to any warrant of the Court, it was held necessary for him to obey that warrant literally; and a messenger who had a warrant authorising him to seize the goods of A., and who seized the goods of B., in the *bond fide* belief that they were the goods of A., was not protected (*r*). So, where companies are incorporated for certain purposes, and are empowered to take lands compulsorily, or otherwise to interfere with private property, the powers which are so conferred upon them cannot be used for any purposes except those sanctioned by the Legislature (*s*). On this ground, a company, which had been incorporated for the purpose of carrying on the business of a carrier by rail, was restrained by injunction from dealing as a coal

(*o*) *Oldaker v. Hunt*, 19 Beav. at pp. 489, 490, *per* Romilly, M.R.

(*p*) *Tinkler v. Wandsworth District Board of Works*, 2 De Gex & Jones, at p. 274, *per* Turner, L.J.

(*q*) *Warne v. Varley*, 6 T. R. 443.

(*r*) *Munday v. Stubbs*, 10 C. B. 432.

(*s*) *Galloway v. Lord Mayor of London*, L. R. 1 H. L. at p. 43, *per* Lord Cranworth, L.C.; *Taylor v. Chichester and Midhurst Rail. Co.*, L. R. 2 Ex. 356, 373, citing *Eastern Counties Rail. Co. v. Hawkes*, 5 H. L. C. 331, 348.

merchant (*t*) ; a company, incorporated for the purpose of making an inland navigation, was restrained from letting boats on hire (*u*) ; and a railway company was restrained from guaranteeing the profits and securing the capital of a steam packet company (*v*). So, too, where trustees were authorised to borrow a certain sum of money and to levy a rate for paying interest upon it, it was held that they could not borrow a larger sum, and a rate which they levied for the payment of interest upon a larger sum was declared invalid (*x*).

Again, the authority of statutes which give power to certain persons or bodies to make bye-laws that may be enforced by penalties, or to grant certificates that may be conclusive on others, must be strictly followed. Where it was provided by a statute that it should be an offence for any passenger to travel on a railway without having paid his fare, if he did so with intent to evade payment, a bye-law which imposed a fine or penalty on any person travelling without payment of his fare, though he had no intention of evading payment, was held to be void as contrary to the statute (*y*). Where an Act of Parliament provided that a railway company might make bye-laws and might apprehend persons who committed any offence against the Act, it was held that this authority did not extend

When bye-laws are made in pursuance of statutes.

(*t*) *Att.-Gen. v. Great Northern Rail. Co.*, 1 Drew & Sm. 154.

(*u*) *Bostock v. North Staffordshire Rail. Co.*, 4 E. & B. 798 ; 3 Sm. & Giff. 283.

(*v*) *Colman v. E. C. Rail. Co.*, 10 Beav. 1.

(*x*) *Richter v. Hughes*, 2 B. & C. 499.

(*y*) *Dearden v. Townsend*, L. R. 1 Q. B. 10 ; *London and Brighton Rail. Co. v. Watson*, L. R. 3 C. P. D. 429 ; 4 C. P. D. 118.

to the bye-laws made in pursuance of the Act, and that a person who committed an offence against them could not be apprehended (z). A railway company was required to carry a certain quantity of luggage for each passenger without extra charge, and was relieved from liability for any luggage beyond that quantity. A bye-law stating that the company would not be responsible for any luggage unless it was booked and paid for was held bad (a). A local board was empowered to make bye-laws relating to such matters as the width of streets, drainage, walls, and to pull down any houses built in contravention of the bye-laws. It was held that the Act did not authorise the Board to make a bye-law to the effect that any building of which they disapproved might be pulled down (b). A statute gave power to a navigation company to make bye-laws for the good government of the company, for the good and orderly using of its navigation, concerning the vessels navigated thereon, and for the well governing of bargemen. It was held that these words did not authorise the company to make a bye-law which provided that the navigation should be closed every Sunday throughout the year (c).

When
certificates
are given
in pursu-
ance of
statutes.

Other cases have been decided on the subject of certificates. Thus the 9 Geo. IV. c. 22, gave costs to the successful party, if the petition against the return of a member to Parliament,

(z) *Chilton v. London and Croydon Rail. Co.*, 16 M. & W. 212.

(a) *Williams v. Great Western Rail. Co.*, 10 Ex. 15.

(b) *Brown v. Local Board of Holyhead*, 1 H. & C. 601.

(c) *Calder and Hebble Navigation Co. v. Pilling*, 14 M. & W. 76.

or the opposition to such petition, was reported to be frivolous and vexatious. It further provided that the Speaker of the House of Commons was to give a certificate of the amount of the costs recoverable, which was to be conclusive evidence of the amount recoverable, and upon the production of which the Court was to enter up judgment. But it was held that the certificate must be given in exact pursuance of the Statute, and therefore where the whole proceedings under an election petition were null and void because the petitioner did not appear, the Speaker's certificate was not considered conclusive. It was necessary that the certificate should be "founded on the report of a committee appointed in conformity with the Act," and as the Act gave no power for the appointment of a committee unless the petitioner appeared, all the proceedings of the committee and the certificate itself, which was based upon them, were wholly invalid (*d*). A later Act provided that the costs of the petitioners against private bills should be taxed by the taxing officer of the House, on application not later than six months after the report of the committee, and not until one month after the delivery of the bill to the party chargeable. The taxing master's certificate was to be conclusive evidence of the amount due, and the validity of such certificate was not to be questioned in any Court. Yet where an application to tax was made before a month had elapsed from the delivery of the bill, it was held that the taxation

(*d*) *Bruyeres v. Halcomb*, 3 A. & E. 381.

was informal, and that the certificate of the taxing officer might be questioned (*e*). Moreover, where the certificate of the taxing officer had been obtained improperly in the absence of the parties affected by it and without notice to them, the Court of Chancery restrained an action brought upon it and declined to treat it as conclusive (*f*). It is impossible to reconcile with these cases and the principle which they establish, a case decided under the Bankruptcy Act, 1869, by the Court for Crown Cases Reserved. The Bankruptcy Act enacted that if at a meeting of creditors a special resolution was passed for the liquidation by arrangement of the affairs of any debtor, and if a trustee was appointed at that or some subsequent meeting, the Registrar of the Court should inquire whether such resolution had been passed and a trustee appointed, and, if satisfied of these facts, should register the resolutions, and that his certificate of the appointment of the trustee should be conclusive evidence of such appointment. It was held that a certificate by the Registrar was conclusive evidence of the appointment of a trustee, although, at the time when such certificate was given, no such resolution had been passed and no liquidation existed (*g*).

The authority of statutes cannot be evaded.

Another important principle with regard to the authority of statutes is that it cannot be evaded. *Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illum* (*h*). “It is a well-known

(*e*) *Williams v. Swansea Canal Navigation Co.*, L. R. 3 Ex. 158.

(*f*) *Swansea Canal Proprietors v. G. W. Rail. Co.*, L. R. 5 Eq. 444.

(*g*) *R. v. Beaumont*, 26 L. T. (N. S.) 587.

(*h*) 2 Inst. 48.

principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance" (i). "Whatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance" (k). "There are many instances in which attempts have been made to break through Acts of Parliament by ingenious artifices which at first sight seem rather the acts of the law than the acts of the parties, and therefore appear to be no violation of the Act of Parliament. But when a Court of Law sees that the real intention of the contriver was to violate a statute, and that that intention has been in point of fact effected by using acts of the law to compass what the statute prohibits, the judges have looked through the form at the substance and real nature of the transaction" (l). The passage just quoted is a modern illustration of the principle laid down in a much earlier case, that judges ought to favour such expositions of a statute as prevent its being eluded or frustrated (m). This principle was acted upon in a case where a statute prohibited any partnership of more than six persons which carried on the business of bankers in London, from accepting in the course of its business a bill of exchange payable in less than six months from the time of its acceptance. An agreement between a London Joint Stock Bank, consisting of more than six persons, and a bank in

(i) *Fox v. Bishop of Chester*, 2 B. & C. at p. 655, *per* Abbott, C.J.

(k) *Booth v. Bank of England*, 7 Cl. & Fin. at p. 540, *per* Tindal, C.J.

(l) *Jeffries v. Alexander*, 8 H. L. C. at p. 629, *per* Byles, J.

(m) *Britton v. Ward*, 2 Rolle's Rep. 127.

Canada, that the manager of the London Bank should accept bills drawn on him by the Canada Bank and payable in less than six months from acceptance, and that the London Bank should provide funds for the payment of such bills, was held unlawful (*n*).

Agreements
contrary
to policy
of statutes
void.

This principle has also been acted upon in the cases which decide that agreements contrary to the policy of certain Acts are void. Thus agreements contrary to the policy of the Bankruptcy Act (*o*), or to the policy of the Insolvent Act (*p*), as an agreement that a creditor of an insolvent on withdrawing his opposition to a discharge should be sole assignee of the insolvent's estate and receive a certain sum out of it (*q*), have all been avoided. The same fate has befallen agreements contrary to the policy of the Winding-up Acts, as an agreement by a shareholder in a company to endeavour to postpone payment of a call or to support the claim of a creditor (*r*); and those contrary to the policy of the Divorce Act, as an agreement by a petitioner in a suit for dissolution of marriage to withdraw the petition in consideration of a sum of money to be paid by the co-respondent (*s*).

But it is
difficult to
decide
what is an
evasion.

It has indeed been pointed out by one judge that no question in the law is more difficult to be determined than the question what particular acts

(*n*) *Booth v. Bank of England*, 7 Cl. & Fin. 509.

(*o*) *Staines v. Wainwright*, 6 Bing. N. C. 174; *Nerot v. Wallace*, 3 T. R. 17; *Mare v. Sandford*, 1 Giff. 288.

(*p*) *Rogers v. Kingston*, 2 Bing. 441; *Hall v. Dyson*, 17 Q. B. 785.

(*q*) *Murray v. Reeves*, 8 B. & C. 421.

(*r*) *Elliot v. Richardson*, L. R. 5 C. P. 744.

(*s*) *Gipps v. Hume*, 2 Johnson & Hemming, 517.

not expressly prohibited should be deemed void as against the policy of a statute (*t*). Other judges have said that they do not understand what is meant by the term evading a statute (*u*), and that unless what is called an evasion of a statute is in reality a clear violation of its provisions it cannot be prevented by any Court of Justice (*x*). It may happen that a statute has been passed for the purpose of prohibiting some particular act, or of providing against some particular mischief. But if the language of the statute falls short of the intention, if the prohibition is so worded as to extend only to certain methods of doing that act or causing that mischief, other methods may be adopted with impunity. Thus the object of the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36), was to secure creditors against frauds which were “frequently committed by secret bills of sale, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons to the exclusion of the rest of their creditors.” The remedy provided by the Act was that every bill of sale, unless registered within twenty-one days, should be void as against execution creditors and assignees in bankruptcy so far as regarded any property which was in the apparent possession of the maker of the bill of

(*t*) *Alexander v. Brame*, 7 De G., M. & G. at p. 539, *per* Turner, L.J.

(*u*) *Edwards v. Hall*, 6 De G., M. & G. at p. 89, *per* Lord Cranworth, L.C.

(*x*) *Jeffries v. Alexander*, 8 H. L. C. at p. 646, *per* Lord Campbell, L.C.

Evasion in the popular sense is not intended.

sale at the time of execution or bankruptcy. But where secret bills of sale were given and were constantly renewed, it was held that if the last of the series was registered it was valid against an execution creditor (*y*). "This," said one of the judges, "is an evasion of the statute in a popular sense; that is to say, it is getting away from the remedial operation of the statute while complying with its words; the mischief the statute intended to remedy has been produced while the words of the statute are complied with" (*z*). Another instance in which evasion in a popular sense was considered insufficient to constitute any violation of the words of a statute is to be found in two cases decided upon the Turnpike Acts, where it was held that avoiding liability to a toll was not the same thing as evading its payment (*a*).

Responsibility imposed by statutes cannot be shifted.

As the authority of statutes cannot be evaded, so the responsibility which they impose upon one person cannot be transferred to another. Where by a statute a duty or obligation is cast upon any man he must discharge it at his peril, and he cannot shift the burden from his own shoulders by employing a substitute. Where a railway company was authorised to construct a bridge over a navigable river, and the Act provided that no vessel navigating the river should be detained for a longer time than was sufficient for the passage of a train,

(*y*) *Smale v. Burr*, L. R. 8 C. P. 64; *Ramsden v. Lupton*, L. R. 9 Q. B. 17.

(*z*) *Ramsden v. Lupton*, L. R. 9 Q. B. at pp. 32, 33, *per* Grove, J.

(*a*) *Veitch v. Trustees of Exeter Road*, 8 E. & B. 988; 27 L. J. (M. C.) 116; *Harding v. Headington*, L. R. 9 Q. B. 157.

it was held that the company was liable for the negligence of a contractor in constructing the bridge so as to cause a longer detention (*b*). So, too, a person who was authorised by the Metropolis Local Management Act to make a drain and cut a trench across a highway, but was bound to fill up the trench as soon as the drain was made, was held liable for the negligence of a contractor (*c*).

The authority of statutes may be enforced either directly or indirectly. It is enforced directly when civil or criminal proceedings are taken against a person who violates the provisions of a statute. It is enforced indirectly when the Courts refuse to give effect to contracts or other dealings which violate the provisions of a statute, or declare such contracts or dealings invalid.

The general rule as to the way in which the authority of statutes may be enforced directly is that whenever a statute orders anything to be done, or forbids the doing of anything, an indictment lies for the omission of the one or the commission of the other, and an action also lies at the suit of any person who has sustained injury from such omission or commission. "What the law says shall not be done it becomes illegal to do, and is therefore the subject matter of an indictment without the addition of any corrupt motives" (*d*). "Whenever an Act of Parliament doth prohibit anything the party grieved shall have an action,

How the
authority
of statutes
may be
enforced.

1. Directly.

By indictment.

(*b*) *Hole v. Sittingbourne and Sheerness Rail. Co.*, 6 H. & N. 488.

(*c*) *Gray v. Pullen*, 5 B. & S. 970.

(*d*) *R. v. Sainsbury*, 4 T. R. at p. 457, *per* Ashhurst, J.

and the offender shall be punished at the King's suit" (e). "In every case where a statute prohibits anything and doth not limit a penalty, the party offending therein may be indicted as for a contempt against the statute" (f).

It is therefore an offence punishable by indictment for a father not to give particulars of the birth of his child to the Registrar of Births upon being required to do so, as the registrar is empowered by statute to require such particulars from a parent (g); for a person to obstruct the making of a towpath which has been expressly authorised by statute (h); for a person to disobey an order as to quarantine made by the Crown in council under the authority of a statute (i), or an order made by the Court of Quarter Sessions (k), or by commissioners (l), under the same authority. It has, however, been held that an indictment does not lie for a nonfeasance which does not affect the public, but merely causes damage to one or two persons (m).

By action. The right of action of a party grieved by another's non-compliance with a statute is established by a long series of authorities. "When an Act prohibits any wrong," says Lord Coke, "an action lies upon it though no form is mentioned (n).

(e) 2 Inst. 163.

(f) *Crowther's Case*, Cro. Eliz. at p. 655.

(g) *R. v. Price*, 11 A. & E. 727.

(h) *R. v. Smith*, 2 Doug. 441.

(i) *R. v. Harris*, 4 T. R. 202.

(k) *R. v. Robinson*, 2 Burr. 799.

(l) *R. v. Walker*, L. R. 10 Q. B. 355.

(m) *R. v. Pawlyn*, 1 Sid. at p. 209.

(n) 2 Inst. 117; *Case of the Marshalsea*, 10 Rep. 75 b; *Privilege of Priests*, 12 Rep. 100. See, too, *Welden v. Vesey*, Poph. at p. 175.

Lord Holt expresses himself thus:—"Where a statute gives a man a right he shall have an action to recover it of consequence, because his right is created by Act of Parliament; and where an Act of Parliament creates a right, or forbids a thing to be done, an action lies *ex consequenti* on the statute for the party grieved" (o). In the report of the House of Lords upon the celebrated case of *Ashby v. White*, we find this passage, based upon Lord Coke's Reports, upon his Institutes and upon Magna Charta: "When any statute requires an act to be done for the benefit of another, or to forbear the doing of an act which may be to his injury, though no action be given in express terms by the statute for the omission or commission, the general rule in all such cases is that the party injured shall have an action" (p). Therefore where a statute imposes a duty or obligation upon any one to pay money, an action will lie against him for its recovery (q). If a statute directs that the expenses of obtaining an Act of Parliament are to be paid, an action of debt lies against the persons who obtained it (r). Where a statute requires a railway company to issue a warrant to the sheriff for the purpose of his summoning a jury to assess the value of land which the company had agreed to purchase, an action for a *mandamus* lies against the company (s). The Ballot Act, 1872 (35 & 36

(o) *Ewer v. Jones*, 2 Ld. Raym. 737.

(p) *Ashby v. White*, 14 State Trials, at p. 785.

(q) *Shepherd v. Hills*, 11 Ex. at p. 67, *per* Parke, B.

(r) *Hutchins v. Kilkenny Rail. Co.*, 9 C. B. 536.

(s) *Fotherby v. Metropolitan Rail. Co.*, L. R. 2 C. P. 188.

Vict. c. 33), imposed certain ministerial duties on the presiding officer at a polling station. It was held that a candidate who lost his election by reason of the failure of the presiding officer to perform such duties, might bring an action against the presiding officer for not following the directions of the Ballot Act (*t*). All these decisions rest upon the principle stated by Erle, C.J., in a case already cited :—"Wherever a statute gives a right to one person to have an act fulfilled by another, and that other does not fulfil it, a cause of action arises" (*u*).

Exception to the rule, where the statute which confers a right creates the remedy.

This rule, however, is subject to a material exception. Where a statute creates a new offence or a new liability, and at the same time provides a special and particular remedy, that remedy must be adopted, to the exclusion of the Common Law remedies of indictment and action (*x*). Thus an indictment will not lie against one who takes upon himself the office of justice of the peace without having a property qualification, because the statute which created this offence appointed a penalty to be recovered by bill, plaint, or information, and "when a statute appoints a penalty for the doing of a thing which was no offence before, and appoints how it shall be recovered, it shall be punishable by that means, and not by indictment" (*y*). Nor does an indictment lie for the killing of a hare (*z*), for the

(*t*) *Pickering v. James*, L. R. 8 C. P. 489.

(*u*) *Fotherby v. Metropolitan Rail. Co.*, L. R. 2 C. P. at p. 194.

(*x*) *Wolverhampton New Waterworks Co. v. Hawkesford*, 6 C. B. N. S. at p. 356, *per* Willes, J.; *Doe d. Bishop of Rochester v. Bridges*, 1 B. & Ad. at p. 859.

(*y*) *Custle's Case*, Cro. Jac. 644.

(*z*) *R. v. Buck*, 2 Strange, 679.

keeping of an alehouse without a licence (*a*), for the burning of place and stock bricks together (*b*), for the erection of buildings without the sanction of the Metropolitan Board of Works (*c*), as in each of these cases the Act which created the offence provided a summary remedy. Nor will an action lie for the poor rate, as the statutory remedy is by distress (*d*), nor for the composition money assessed in lieu of statute duty for which the surveyors of highways were entitled to distrain (*e*), nor upon a County Court judgment (*f*), nor for a breach of the sailing regulations, or of provisions as to fishing boats, both of which were punishable by a penalty (*g*), nor for a proportion of the cost of paving streets, which was recoverable before two justices (*h*). On the same ground, it has been decided that where a statute which creates a liability gives exclusive jurisdiction over the subject to one particular Court, no action can be brought in any other (*i*). Thus a statute provided that every owner of shares in a company should pay a rateable proportion of the calls which were authorised by the same statute, and that if he did not, it should be lawful

(*a*) *Stephens v. Watson*, 1 Salk. 45, more fully reported as *Watson's Case*, 3 Salk. 26 ; *R. v. Marriot*, 4 Mod. 144.

(*b*) *R. v. Malland*, 2 Strange, 828.

(*c*) *R. v. Lovibond*, 24 L. T. N. S. 357.

(*d*) *Stevens v. Evans*, 2 Burr. at p. 1157.

(*e*) *Underhill v. Ellicombe*, M'Clel. & Younge, 450.

(*f*) *Berkeley v. Elderkin*, 1 E. & B. 805.

(*g*) *General Steam Nav. Co. v. Morrison*, 13 C. B. 581 ; *Stevens v. Jeacocke*, 11 Q. B. 731.

(*h*) *Vestry of St. Pancras v. Battersbury*, 2 C. B. N. S. 477 ; *Mayor of Blackburn v. Parkinson*, 1 E. & E. 71.

(*i*) *Marshall v. Nicholls*, 18 Q. B. 882.

for the company to sue for the calls in the Courts at Dublin. It was held that as the right to the calls and the remedy for their nonpayment were given by the same statute, an action for the calls could not be brought in the Courts at Westminster (*k*).

The right
and re-
medy must
be created
by the
same
statute.

But this exception to the general rule prevails only where the right and remedy are created by the same Act, or by the same part of the Act, and where the right and remedy are co-extensive. In other cases the Common Law remedies are not taken away, but the new remedies are considered to be cumulative. This principle is clearly expressed by Lord Mansfield: "I always took it," he says in one case, "that where new-created offences are only prohibited by the general prohibitory clause of an Act of Parliament an indictment will lie; but where there is a prohibitory particular clause specifying only particular remedies, there such particular remedy must be pursued" (*l*). And in another case he says: "The true rule of distinction seems to be, that where the offence intended to be guarded against by a statute was punishable before the making of such statute prescribing a particular mode of punishing it, there such particular remedy is cumulative, and does not take away the former remedy; but where the statute only enacts that the doing any act not punishable before shall for the future be punishable in such and such a particular manner, there it is necessary that such particular method by such act prescribed must be

(*k*) *Dundalk Rail. Co. v. Tapster*, 1 Q. B. 667.

(*l*) *R. v. Wright*, 1 Burr. at p. 544.

specifically pursued, and not the Common Law method of an indictment" (*m*). The same distinction is drawn by Willes, J., in a case already cited, between the three classes of cases in which a liability may be founded upon a statute; the cases in which an existing Common Law liability is provided with a cumulative remedy; those in which the statute gives a new right of action, but provides no particular form of remedy; and those in which both right and remedy are created by the same statute, and the remedy is, therefore, exclusive (*n*). Where a right already exists at Common Law, or by virtue of an earlier statute, it is not, in the absence of very clear words, to be narrowed by a later Act which provides a new remedy. "The general rule of law and construction undoubtedly is that where an Act of Parliament does not create a duty or offence, but only adds a remedy in respect of a duty or offence which existed before, it is to be construed as cumulative; but this rule must, in all cases, be applied with due attention to the language of each Act of Parliament" (*o*). Thus it was held that the treasurers of a benefit club might bring an action for the recovery of money entrusted to a member, because though the Act 33 Geo. III. c. 54, gave such clubs a remedy by petition, it did not thereby deprive them of their Common Law right

(*m*) *R. v. Robinson*, 2 Burr. at p. 805; followed in *R. v. Boyall*, 2 Burr. 832.

(*n*) *Wolverhampton New Waterworks Co. v. Hawkesford*, 6 C. B. N. S. at p. 356.

(*o*) *Richards v. Dyke*, 3 Q. B. at pp. 268—9, *per* Lord Denman, C.J.; see also *R. v. Carlile*, 3 B. & Ald. 161; *Morton v. Mahon*, 2 Ir. Jur. (O. S.) 238, 240; *Rowning v. Goodchild*, 2 W. Bl. at p. 910.

of action (*p*). Thus, too, it was decided that the summary remedy given to prisoners for any ill treatment on the part of a gaoler was cumulative (*q*). Thus, too, the Act 13 & 14 Car. II. c. 12, gave power to two justices to remove a person who was likely to become chargeable to a parish. A later Act, 3 & 4 Wm. & Mary, c. 11, imposed a fine upon any overseer of the poor who refused to receive a person removed by warrant of two justices. It was held that an overseer who refused to receive a pauper removed by order of two justices was indictable, as his refusal was an offence against the earlier statute, and not merely a new offence created by the later (*r*).

And by the
same part
of the
statute.

Again, if an absolute right is given by one part of a statute which is wholly distinct from the part providing a remedy, either the statutory or the Common Law remedy may be adopted (*s*). "It is a clear and established principle that when a new offence is created by an Act of Parliament, and a penalty is annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty; but he may proceed on the prior clause, on the ground of its being a misdemeanour" (*t*). Thus where an Act, which gave a remedy by summary proceedings for an erection on a road, declared also that such erection should be a common nuisance, an indictment was sustained (*u*).

(*p*) *Sharp v. Warren*, 6 Price, 131.

(*q*) *Yorke v. Chapman*, 10 A. & E. 207.

(*r*) *R. v. Davis*, Sayer, 163.

(*s*) *R. v. Wright*, 1 Burr. at p. 545, *per* Denison, J.

(*t*) *R. v. Harris*, 4 T. R. at p. 205, *per* Ashhurst, J.

(*u*) *R. v. Gregory*, 5 B. & Ad. 555.

Thus, too, the Act 6 & 7 Vict. c. 73, contained in sect. 2 an express provision that persons should not act as attorneys unless they had been previously admitted. Sections 35 and 36 of the same statute enacted that any person acting as an attorney, without having been previously admitted, should be incapable of recovering his fees, and should be punished for contempt of Court. It was held, however, that an indictment lay under the general prohibition in the second section (*x*). Lord Denman, C. J., there said (*y*) :—"Whenever a person does an act which a statute on public grounds has prohibited generally, he is liable to an indictment. I quite agree that where in the clause containing the prohibition a particular mode of enforcing the prohibition is prescribed and the offence is new, that mode only can be pursued. The case is then as if the statute had simply declared that the party doing the act was liable to the particular punishment. But where there is a distinct absolute prohibition, the act is indictable. Here the clauses authorising the punishment by a proceeding for contempt are quite distinct from the prohibitory clause."

Nor are other remedies excluded unless the right and the remedy given by the statute are co-extensive. A statute which confers an absolute right on certain persons, and imposes a penalty for its infringement, does not take away the right of action, though it may be a bar to any remedy by

(*x*) *R. v. Buchanan*, 8 Q. B. 883.

(*y*) At pp. 887—8.

indictment (z). Thus the Copyright Act, 8 Anne, c. 19, conferring copyright upon the authors of books, imposed a penalty upon persons infringing that copyright, and provided that the penalty might be recovered by a common informer. It was held that, although a person infringing an author's copyright was liable to this penalty, such liability on his part did not affect the author's right to sue him for damages (a). So, too, where the Copyright Act, 5 & 6 Vict. c. 45, created new rights, and gave a special right of action in certain cases of infringement, it was held not to exclude an action in other cases for which it made no provision (b). So where a statute authorised a town in the State of Massachusetts to grant the privilege of taking fish in a certain river, and imposed a penalty on persons who obstructed the passage of the fish, it was held that the grantee of this privilege might bring an action for such an obstruction (c).

Attempts have been made to extend this principle to cases in which no absolute right was conferred by statute, but a qualified duty was imposed to be enforced in a particular way, or for a special purpose. The Court of Queen's Bench decided that where by the Act of the 7 & 8 Vict. c. 112, s. 18, a shipowner was required to have a proper supply of medicine on board his ship, and in default was liable to a penalty recoverable at the suit of any person, half of which penalty was to

(z) *Mayor of Lichfield v. Simpson*, 8 Q. B. 65.

(a) *Beckford v. Hood*, 7 T. R. 620.

(b) *Novello v. Sudlow*, 12 C. B. 177.

(c) *Barden v. Crocker*, 10 Pickering, 383.

go to the informer ; he was also liable to an action at the suit of any seaman whose health was injured by the want of medicine (*d*). This decision was followed by the Court of Exchequer, which held that a water company might be sued for damage done by fire if it failed to keep its pipes charged with water, as required by the Waterworks Clauses Act, 1847, although the same Act imposed a penalty for the neglect of this duty (*e*). But the judgment of the Court of Exchequer was reversed on appeal, and grave doubts were then expressed as to the soundness of the "broad general proposition" laid down by the Court of Queen's Bench (*f*). Lord Campbell, C. J., had drawn a distinction between cases in which "the performance of a new duty created by Act of Parliament was enforced by a penalty recoverable by the party grieved by the non-performance," and cases in which the penalty was recoverable by a common informer, and had decided that in the latter class of cases the penalty was merely a punishment for an offence against the public, and did not deprive the party grieved of his right of action. The judgment of the Court of Appeal makes this distinction no longer tenable. Again, where a duty is imposed for the special purpose of averting one particular mischief, a person who suffers a different kind of mischief by reason of the non-

(*d*) *Couch v. Steel*, 3 E. & B. 402 ; 23 L. J. Q. B. 121.

(*e*) *Atkinson v. Newcastle and Gateshead Waterworks Co.*, L. R. 6 Ex. 404.

(*f*) *Atkinson v. Newcastle and Gateshead Waterworks Co.*, L. R. 2 Ex. D. 441.

performance of that duty, has no right of action. Thus, where certain pens were required to be fitted up for the prevention of contagious diseases among cattle, and owing to the absence of these pens the plaintiff's sheep were washed overboard, it was held that he could not recover (*g*).

2. Indirectly.

Contracts made in violation of statutes declared void.

We turn now to the manner in which the authority of statutes may be enforced indirectly. The rule on this subject is laid down by Lord Holt. "Every contract made for or about any matter or thing which is prohibited, or made unlawful by statute, is a void contract, though the statute does not mention that it shall be so, but only inflicts a penalty on the offender, because a penalty implies a prohibition though there are no prohibitory words in the statute" (*h*). Therefore where the 10 Geo. II. c. 31, enacted that it should not be lawful for any wherryman to take any person as his apprentice unless he was the occupier of some house or tenement wherein to lodge himself and his apprentice, it was held that an indenture of apprenticeship made in contravention of this section was void (*i*). The same construction was placed upon the 28 Geo. III. c. 48, which imposed a penalty on any person employing a boy under the age of eight as a chimney-sweeper, and an indenture of apprenticeship contrary to the provisions of that Act was held not merely voidable, but absolutely void (*k*). So where 39 & 40

(*g*) *Gorris v. Scott*, L. R. 9 Ex. 125.

(*h*) *Bartlett v. Vinor*, Carth. 252. See also *Cope v. Rowlands*, 2 M. & W. at p. 157, *per* Parke, B.

(*i*) *R. v. Gravesend, Inhabitants*, 3 B. & Ad. 240.

(*k*) *R. v. Hipswell*, 8 B. & C. 466.

Geo. III. c. 99, provided that pawnbrokers before advancing money on any pawn or pledge should make a particular entry in their books under a penalty, it was held that a contract of pawn made without such an entry was void, and that the pawnbroker acquired no property in the goods so taken (*l*). So where a statute specified the various purposes to which a railway company might apply its funds, a contract for the application of those funds to other purposes was declared invalid (*m*). Where a penalty was imposed on any surveyor of highways who had an interest in any contract for work or materials done or provided on the highways under his care, without a licence from two justices, it was held that such contracts were illegal, and that the surveyor's accounts containing items in respect of such contracts could not be allowed by the sessions (*n*).

In many other cases it has been held that no action can be brought to enforce a contract which is forbidden by statute. Thus the seller of goods has been debarred from recovering their price where he has sold corn by hobbett instead of by bushel (*o*), or coals without any ticket (*p*), or without a ticket signed by the labouring meter (*q*), or bricks of

Actions cannot be brought on contracts in violation of statutes.

(*l*) *Fergusson v. Norman*, 5 Bing. N. C. 76. See as to the provisions of the same statute for the manner in which the names of persons carrying on the business of pawnbrokers are to be made known to the world, and as to the effect of a breach of such provisions, *Gordon v. Howden*, 12 Cl. & Fin. 237.

(*m*) *Macgregor v. Dover and Deal Rail. Co.*, 18 Q. B. 618.

(*n*) *Barton v. Piggott*, L. R. 10 Q. B. 86.

(*o*) *Tyson v. Thomas*, M'Clel. & Younge, 119.

(*p*) *Cundell v. Dawson*, 4 C. B. 376.

(*q*) *Little v. Poole*, 9 B. & C. 192.

smaller dimensions than those specified by statute (*r*), or butter packed in vessels which were not marked with the name of the seller and the weight of their contents (*s*), or spirits for the purpose of their being retailed by an unlicensed person (*t*), or smuggled into England (*u*), or drugs for the purpose of their being used in brewing (*x*), or goods for the purpose of their being shipped on board foreign vessels trading to the East Indies (*y*). Nor can payment for work and labour be recovered by an unlicensed broker (*z*), (though he can recover for money paid) (*a*), by a person acting as conveyancer without the required qualification (*b*), by a printer who has not affixed his name to a book (*c*), or who has falsely sworn in an affidavit that he is sole proprietor of a newspaper (*d*), or by a builder who has erected a building in contravention of the provisions of the Metropolitan Building Act (*e*). Nor can an action be brought to recover money lent for the purpose of playing at an illegal game (*f*), or of settling losses in

(*r*) *Law v. Hodson*, 11 East, 300.

(*s*) *Forster v. Taylor*, 5 B. & Ad. 887.

(*t*) *Ritchie v. Smith*, 6 C. B. 462; *Hamilton v. Grainger*, 5 H. & N. 40.

(*u*) *Clugas v. Penaluna*, 4 T. R. 466.

(*x*) *Langton v. Hughes*, 1 M. & S. 593.

(*y*) *Lightfoot v. Tenant*, 1 B. & P. 551.

(*z*) *Cope v. Rowlands*, 2 M. & W. 149.

(*a*) *Smith v. Lindo*, 4 C. B. N. S. 395; 5 C. B. N. S. 587.

(*b*) *Taylor v. Crowland Gas and Coke Co.*, 10 Ex. 293.

(*c*) *Bensley v. Bignold*, 5 B. & Ald. 335.

(*d*) *Stephens v. Robinson*, 2 Cr. & Jer. 209.

(*e*) *Stevens v. Gourley*, 7 C. B. N. S. 99.

(*f*) *M'Kinnell v. Robinson*, 3 M. & W. 434.

illegal stock-jobbing transactions (*g*), or paid for the purpose of carrying on an unlicensed theatre (*h*). An action cannot be brought for the breach of a contract to dance at an unlicensed theatre (*i*), or upon an agreement to perform stage plays in a place where they are prohibited by law (*k*), or upon a warranty given on a Sunday (*l*), or for the infringement of the copyright of a print if the date of its publication is not engraved on it (*m*), or for rent reserved by a lease of premises intended to be used for boiling oil and tar contrary to the provisions of the Building Act (*n*).

Where a statute prohibits under a penalty an agreement to pay certain expenses, no action lies upon such an agreement (*o*), and when an Act provides that a person who has paid a bet may recover it by action from the winner, it impliedly deprives the winner of the right to sue for the bet (*p*).

If, however, a penalty is imposed on contracts or dealings for the purpose of protecting the revenue and of providing for the proper payment of duties, no prohibition is implied by law, and

But where penalties are imposed for the protection of the revenue

(*g*) *Cannan v. Bryce*, 3 B. & Ald. 179.

(*h*) *De Bagnis v. Armistead*, 10 Bing. 107.

(*i*) *Gallini v. Laborie*, 5 T. R. 242.

(*k*) *Levy v. Yates*, 8 A. & E. 129.

(*l*) *Fennell v. Ridler*, 5 B. & C. 406.

(*m*) *Brooks v. Cock*, 3 A. & E. 138; *Sayer v. Dicey*, 3 Wils. 60; though the words of the Act were held directory only in *Blackwell v. Harper*, 2 Atk. 93.

(*n*) *Gas Light and Coke Co. v. Turner*, 5 Bing. N. C. 666; 6 Bing. N. C. 324.

(*o*) *O'Brien v. Dillon*, 9 Ir. C. L. R. (Q. B.) 318.

(*p*) *Thorpe v. Coleman*, 1 C. B. 990.

only, no
prohibition
is implied.

such contracts or dealings, though they render the persons who engage in them liable to a penalty, may be enforced by action. This principle does not apply where there is an express prohibition of a contract either for the protection of the revenue or for any other purpose (*q*), and the expressions of Lord Brougham (*r*), which seem to imply that an action might be maintained "if for the purpose of protecting the revenue anything is forbidden to be done under a penalty," or "is prohibited under a penalty," must be somewhat qualified. But in the absence of express prohibition the question is, whether a penalty is imposed merely for the sake of the revenue or with the view of protecting the public against fraud or other injury. In the first class of cases an action will lie, as was held with regard to dealers in tobacco who were required to take out a licence under a penalty of £50 (*s*), and who were liable to a penalty if they did not have their names painted on their premises (*t*), and with regard to distillers, who were liable to a penalty if they carried on the business of retail dealers in spirits within two miles of their distillery (*u*). "These cases," said Lord Tenterden, C.J., in the one last cited (*x*), "are very different from those where the provisions of Acts of Parliament have had for their object the protection of the public, such as the Acts against stock-jobbing and the Acts

(*q*) *Cope v. Rowlands*, 2 M. & W. at p. 157, *per* Parke, B.

(*r*) *Swan v. Blair*, 3 Cl. & Fin. at p. 632.

(*s*) *Johnson v. Hudson*, 11 East, 180.

(*t*) *Smith v. Mawhood*, 14 M. & W. 452.

(*u*) *Brown v. Duncan*, 10 B. & C. 93.

(*x*) 10 B. & C. at pp. 98, 99.

against usury. It is different also from the case where a sale of bricks required by Act of Parliament to be of a certain size was held to be void because they were under that size (*y*). There the Act of Parliament operated as a protection to the public as well as to the revenue, securing to them bricks of the particular dimensions. Here the clauses of the Act of Parliament had not for their object to protect the public but the revenue only." The same distinction was drawn in some of the cases which have been already cited, and in which it was held that no action could be brought where a penalty was imposed for the purpose of preventing fraud and of protecting the public (*z*).

The rule by which contracts in contravention of statutes have been declared void or incapable of being enforced by action has been restricted in some other cases. It has been held not to extend to a contract in which neither the consideration for the promise nor the act to be done were illegal, but where there was an infringement of the law, not contemplated by the contract, in its execution (*a*). It does not extend to a case in which the seller of goods knows that the buyer will make an illegal use of them, if the seller himself is not a sharer in the illegal transaction (*b*). Where an Act prohibits a thing and does not expressly avoid securi-

Cases in which contracts themselves are not avoided.

(*y*) *Law v. Hodson*, 11 East, 300, *ante*, p. 82.

(*z*) *Law v. Hodson*, 11 East, at p. 301 ; *Cope v. Rowlands*, 2 M. & W. at p. 157 ; *Fergusson v. Norman*, 5 Bing. N. C. at p. 85 ; *Cundell v. Dawson*, 4 C. B. at pp. 397—8 ; *Ritchie v. Smith*, 6 C. B. at pp. 474—5.

(*a*) *Wetherell v. Jones*, 3 B. & Ad. 221.

(*b*) *Hodgson v. Temple*, 5 Taunt. 181.

ties which fall within the prohibition, if the violation of law does not appear on the face of the instrument and is unknown to its holder, he can enforce the security (*c*). An Act which imposes a penalty on the master of a ship if he takes a seaman to sea without a written agreement, or if he carries deck cargo, does not render the voyage illegal or avoid a policy of insurance (*d*). An Act which renders conveyances made for the purpose of creating votes invalid does not prevent their passing the interest in the land (*e*), nor is the Act which restrains corporations from mortgaging property without the sanction of the Treasury any bar to an action against a corporation on a covenant to repay the money it has borrowed upon such a mortgage (*f*). Where an Act provided that no person interested in any contract with a company should be one of its directors, and that, if after becoming a director he was concerned in any such contract, his office should be void, it was held that the contract with the company was not invalid (*g*).

Where the marriage of minors by licence without the consent of their parents was visited with the forfeiture of all property accruing from the marriage, it was held that the marriage itself was not avoided (*h*). And when it was provided that

(*c*) *Broughton v. Manchester Waterworks Co.*, 3 B. & Ald. at p. 10, *per* Holroyd, J.

(*d*) *Redmond v. Smith*, 7 M. & G. 457; *Cunard v. Hyde*, E. B. & E. 670; *Wilson v. Rankin*, 6 B. & S. 208; L. R. 1 Q. B. 162.

(*e*) *Phillpotts v. Phillpotts*, 10 C. B. 85.

(*f*) *Payne v. Mayor of Brecon*, 3 H. & N. 572.

(*g*) *Foster v. Oxford, Worcester and Wolverhampton Rail. Co.*, 13 C. B. 200.

(*h*) *R. v. Birmingham*, 8 B. & C. 29.

no one should act as a justice of the peace unless he had taken an oath and delivered in a certificate at the general sessions, it was held that a person who acted as a justice without having taken this oath and delivered in this certificate was liable to a prosecution, but that the acts done by him as a justice were not invalid (*i*).

An important branch of the subject treated in this chapter is the protection given by statutes to persons who act, or profess to act, under their authority. Many of the statutes which either confer a power or impose a duty, provide that all actions brought in respect of anything "done in pursuance of the Act" shall be brought within a certain time, or in a specified county, or shall be preceded by a certain notice. Strictly speaking these clauses would apply only to things which were not actionable, for anything really done in pursuance of the powers given by an Act of Parliament would be absolutely protected. But the meaning which has been put upon these words is not the literal meaning, and the protection given by such clauses is extended to all persons who, in discharging a public duty imposed upon them, act in the honest belief that they are doing what is authorised by the statute. It may be difficult to reconcile with this general rule some of the many cases which have been decided by different Courts and judges, but the rule can be fairly deduced from the great majority of decisions.

Protection given by statutes to those who act under their authority.

The first question is, who are the persons entitled to this protection. In some instances the words

To what persons it is given.

(*i*) *Margate Pier Co. v. Hannam*, 3 B. & Ald. 266.

by which it is given are general, and include not only those persons upon whom any duty is imposed, but also those on whom any right is conferred by the statute. But in Acts dealing with public officers the words are more frequently limited.

Justices of
the peace.

Thus there are statutes which limit the time within which actions may be brought against justices for anything done in the execution of their office, and which require a previous notice of action. It has been held that these Acts apply to cases in which a justice has acted in the execution of his office, but beyond the limits of his jurisdiction (*k*), to cases in which he has committed a man to take his trial for perjury when the proceedings upon which the false evidence was given were irregular and illegal (*l*), to cases in which he has detained goods upon suspicion of felony, though he had no reasonable ground for suspicion (*m*), even to cases in which he has acted maliciously (*n*). Where one justice did an act which could only be done by two justices, he was held to be entitled to notice of action (*o*), as also where he was authorised to commit the driver of a waggon for riding in it without having any one to guide the horses, and he committed a waggoner for being in his waggon on the highway while it was standing still (*p*). On the other hand, it has been held that a person acting

(*k*) *Partridge v. Woodman*, 1 B. & C. 12.

(*l*) *Hazeldine v. Grove*, 3 Q. B. 997.

(*m*) *Wedge v. Berkeley*, 6 A. & E. 663.

(*n*) *Kirby v. Simpson*, 10 Ex. 358.

(*o*) *Weller v. Toke*, 9 East, 364.

(*p*) *Bird v. Gunston*, 2 Chit. 459. It is difficult to reconcile with these cases that of *James v. Saunders*, 10 Bing. 429.

as justice under an invalid appointment was not entitled to notice of action. Where each alderman of a borough was made a justice of the peace by charter, and was by the same charter authorised to appoint a deputy to execute the office of alderman, it was held that this charter did not empower an alderman to appoint a deputy to execute the office of justice of the peace, and that a person acting as a justice under such an appointment was not entitled to the protection of the statutes (*q*). In another case it was held that the mayor of a borough, who took a fee which he claimed as mayor, was not entitled to notice of action as justice of the peace, as it was clear that he could not have claimed the fee by virtue of that office (*r*).

The Acts which give similar protection to con- Constables
stables extend to things done in excess of the powers and other
conferred on them, as to unnecessary violence in officers.
effecting an apprehension (*s*), to the breaking open
of an outer door in the execution of a warrant of
distress (*t*), to the seizure of the goods of the wrong
person (*u*), or of the wrong colour (*x*), to the apprehension of a person in the belief that an offence has been committed, though without actual knowledge (*y*), or upon imperfect information (*z*). An

(*q*) *Jones v. Williams*, 3 B. & C. 762.

(*r*) *Morgan v. Palmer*, 2 B. & C. 729.

(*s*) *Butler v. Ford*, 1 Cr. & M. 662.

(*t*) *Theobald v. Crichmore*, 1 B. & Ald. 227.

(*u*) *Parton v. Williams*, 3 B. & Ald. 330. The same principle applies to the bailiff of a County Court, *Burling v. Harley*, 3 H. & N. 271.

(*x*) *Smith v. Wiltshire*, 2 Brod. & Bing. 619; 5 Moore, 322.

(*y*) *Ballinger v. Ferris*, 1 M. & W. 628.

(*z*) *Gosden v. Elphick*, 4 Ex. 445; 19 L. J. Ex. 9.

arrest by an officer of excise of a man whom he suspected of being a smuggler, and whom he arrested somewhat too hastily upon his refusing to stand search immediately after an affray, was protected on the same principle (*a*). And where an officer, acting under the warrant of the Southwark Court of Requests, entered a house in search of a person whom he had to arrest, it was held that he was entitled to notice of action if he believed the person to be there, though the person was not there in fact, and the officer had no sufficient grounds for his belief (*b*). Other official acts are similarly protected. An officer of excise, who had received duties after the repeal of the Act by which they were imposed, was held to be entitled to the notice of action given by that Act when sued for the money (*c*). A toll collector, who was authorised by a Turnpike Act to levy certain tolls, and who levied a toll which was not authorised, was still entitled to the protection of that statute (*d*). Surveyors of highways who received payment of an assessment upon a highway rate, though that rate was neither signed, allowed, nor published, according to the requirements of the Highway Act, were held to be entitled to the notice of action given by that statute, as they intended to act in performance of the duties of their office, and believed that they were doing what the law allowed (*e*). The same protection was given to the

(*a*) *Daniel v. Wilson*, 5 T. R. 1.

(*b*) *Cook v. Clark*, 10 Bing. 19.

(*c*) *Greenway v. Hurd*, 4 T. R. 553.

(*d*) *Waterhouse v. Keen*, 4 B. & C. 200.

(*e*) *Selmes v. Judge*, L. R. 6 Q. B. 724.

officer of the Borough Court of Manchester in respect of a false return to a writ of *fieri facias* (*f*).

Where public works are directed or authorised by statutes, similar provisions as to notice of action are often inserted. The protection which is so given covers not only positive acts of negligence, such as obstructions put in the highway by surveyors, and left there without a light (*g*), but also the omission to perform any part of the duties imposed by statute. In some cases it had been suggested that the words “anything done in pursuance of the Act” could not include an omission (*h*); but this can no longer be maintained. It has been decided that such words do include the omission to fence or light a hole left in the highway (*i*), the omission to remove water from above a dam made in a sewer (*k*), the omission to provide proper buoys for an anchor sunk in a navigable river (*l*). “It is now settled by authority,” says Kelly, C.B., in one of the cases cited (*m*), “that an omission to do something that ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such

Persons
executing
public
works.

In cases of
omission.

(*f*) *Joule v. Taylor*, 7 Ex. 58. This, however, is “a decision difficult to be understood”; see *Partridge v. Elkington*, L. R. 6 Q. B. at p. 84, *per* Blackburn, J.

(*g*) *Davis v. Curling*, 8 Q. B. 286; *Hardwick v. Moss*, 7 H. & N. 136.

(*h*) *Umphelby v. M'Lean*, 1 B. & Ald. 42; *Partridge v. Elkington*, L. R. 6 Q. B. at p. 84, *per* Blackburn, J.

(*i*) *Newton v. Ellis*, 5 E. & B. 115; 24 L. J. Q. B. 337; *Wilson v. Mayor of Halifax*, L. R. 3 Ex. 114.

(*k*) *Poulsum v. Thirst*, L. R. 2 C. P. 449.

(*l*) *Jolliffe v. Wallasey Local Board*, L. R. 9 C. P. 62.

(*m*) *Wilson v. Mayor of Halifax*, L. R. 3 Ex. at pp. 119, 120.

duty unperformed, amounts to an act done, or intended to be done, within the meaning of these clauses, requiring notice of action for the protection of public bodies acting in the discharge of public duties under Acts of Parliament." In addition to these cases, in which a duty is imposed by statute, it may be mentioned that analogous safeguards have been provided for canal companies which have taken lands or water to which they were not entitled (*n*); for railway companies when sued for the recovery of excessive charges (*o*), but not when sued for negligence as carriers (*p*); for the treasurer of a dock company which had prevented certain brokers from carrying on their business at the docks (*q*); for a dockmaster who gave improper directions for moving vessels into the docks, and thereby caused the vessels to be damaged (*r*); for the owner of premises, who intended to comply with the provisions of the Building Act in raising a party wall but failed in their observance (*s*).

To what persons the protection is not given.

The following persons have been held to have no such claim to statutory protection:—a Trinity House pilot who was guilty of negligence in navigating a vessel, though navigating it in pursuance of a statute (*t*); a Custom House officer seizing

(*n*) *Lord Oakley v. Kensington Canal Co.*, 5 B. & Ad. 138; *Gaby v. Wilts and Berks Canal Co.*, 3 M. & S. 580.

(*o*) *Kent v. Great Western Rail. Co.*, 3 C. B. 714.

(*p*) *Palmer v. Grand Junction Rail. Co.*, 4 M. & W. 749; *Carpue v. London and Brighton Rail. Co.*, 5 Q. B. 747.

(*q*) *Wallace v. Smith*, 5 East, 115.

(*r*) *Smith v. Shaw*, 10 B. & C. 277.

(*s*) *Pratt v. Hillman*, 4 B. & C. 269.

(*t*) *Lawson v. Dumlin*, 9 C. B. 54.

goods as forfeited when they were not liable to seizure, and taking a bribe from the owner for their release (*u*); constables or parish officers appointed under a local Act, and doing something not authorised by that Act, but within the scope of their general authority (*x*); assignees in bankruptcy taking possession of goods left in the hands of the bankrupt (*y*), or entering the premises of a third person in search of the bankrupt's property (*z*). Where the owner of a horse was entitled to arrest any person who cruelly ill-treated it, the son of an owner was held not to be entitled to notice of action when sued for giving the plaintiff in charge for such an offence (*a*). Where gamekeepers, who were appointed by a deputation registered under 1 & 2 Wm. IV. c. 32, were authorised to seize guns or dogs, and two gamekeepers, appointed by deputations made before the passing of the Act, seized a gun and a dog, it was held that they were not entitled to notice of action (*b*). Where a Custom House officer seized a man who was going abroad, and whom he believed to be an artificer, it was held that the Custom House officer, having no right to seize an artificer, was not entitled to notice of action (*c*). It would seem too clear for argu-

(*u*) *Irving v. Wilson*, 4 T. R. 485.

(*x*) *Shatwell v. Hall*, 10 M. & W. 523; *Eliot v. Allen*, 1 C. B. 18.

(*y*) *Carruthers v. Payne*, 5 Bing. 270.

(*z*) *Edge v. Parker*, 8 B. & C. 697. See also *Worth v. Budd*, 2 B. & Ad. 172; *Knight v. Turquand*, 2 M. & W. 101.

(*a*) *Hopkins v. Crowe*, 4 A. & E. 774.

(*b*) *Bush v. Green*, 4 Bing. N. C. 41; *Lidster v. Borrow*, 9 A. & E. 654.

(*c*) *Lawton v. Miller*, cited by Bayley, J., in *Cook v. Leonard*, 6 B. & C. at p. 355.

ment that where the servant of a contractor leaves his horse and cart in the street, without any one to look after it, and goes home to his dinner, this is not an "act done in pursuance" of the statute under which the contractor is working (*d*). An Act requiring a month's notice before the institution of any proceedings against a local board does not affect the jurisdiction of the Court of Chancery, or render such a notice necessary before an application is made for an injunction (*e*).

There
must be
an honest
belief that
the acts
done are
authorised.

It has been already stated that the protection of these statutes is given to persons who act in the honest belief that they are doing what the statutes authorise, and it is not necessary that such a belief should be reasonable so long as there are some grounds for its existence. "If a person acts in the honest belief that facts exist which would entitle him to act in pursuance of the statute, he is not to be deprived of its protection because the jury find that there were no grounds on which they think it reasonable that he should entertain that belief. If he acts without any grounds for belief whatever, he acts on mere guess-work or suspicion, and without anything that could be called a belief at all" (*f*). An honest belief that an offence has been committed against a statute entitles a person acting under the statute to its protection, although no such offence was in fact committed. Thus, a farm

(*d*) *Whatman v. Pearson*, L. R. 3 C. P. 422.

(*e*) *Att.-Gen. v. Hackney Local Board*, L. R. 20 Eq. 626.

(*f*) *Chamberlain v. King*, L. R. 6 C. P. 474. See also the rule laid down in *Herman v. Seneschal*, 13 C. B. at pp. 402, 403, *per* Erle, C.J., and in *Roberts v. Orchard*, 2 H. & C. at p. 774, *per* Williams, J.

reeve who had the care of certain lands and apprehended a man for making a road over them, in the belief that he was doing a malicious injury (*g*); a highway board which pulled down a gate, in the belief that a public footway was obstructed, though, in fact, no such footway existed (*h*); an owner of property taking proceedings against persons for lopping his trees (*i*), or stripping lead off his roof (*k*), or other acts which he believed to be within the Act against malicious injuries (*l*), were held to be entitled to notice of action. There may also be an honest but mistaken belief as to the persons who are empowered to act, and the limits within which they may act, under some statute. On this ground protection was given to the owner of a fishery who was empowered to apprehend persons unlawfully using his fishery, and who did apprehend a man fishing just beyond its limits (*m*); to a surveyor of highways, who was not duly appointed, but acted in the belief that he was (*n*); to a County Court judge, who committed a man to prison for disobedience to an order after the service of a writ of prohibition (*o*); to a reversioner, who believed that he was justified in exercising the powers given to an "owner of property" by the Malicious Trespass Act (*p*); to commissioners

(*g*) *Wright v. Wales*, 5 Bing. 336.

(*h*) *Smith v. Hopper*, 9 Q. B. 1005.

(*i*) *Beechey v. Sides*, 9 B. & C. 806.

(*k*) *Rudd v. Scott*, 2 Scott, N. R. 631.

(*l*) *Reed v. Cowmeadow*, 6 A. & E. 661.

(*m*) *Hughes v. Buckland*, 15 M. & W. 346.

(*n*) *Huggins v. Waydey*, 15 M. & W. 357.

(*o*) *Booth v. Cive*, 10 C. B. 827; 20 L. J. C. P. 151.

(*p*) *Horn v. Thornborough*, 3 Ex. 846. Contrast with this the

who were authorised to take scheduled lands, and who, for the purpose of following the directions of the Act, took lands which were not included in the schedule (q).

Reason-
able belief
not neces-
sary.

In some of these cases, indeed, the belief that is required to bring persons within the statute is called reasonable as well as honest. It was once distinctly laid down that mere honest belief was not sufficient, but the case in which this proposition was stated, if it can be supported at all, must rest upon other grounds than those assigned by the judges. In that case a local Act imposed a penalty on persons who exhibited any beast in the streets of Stroud. The defendants, professing to act under the authority of this statute, tried to remove a dromedary which had been exhibited in the street, but was then in a stable. It was held that, although they might have removed the dromedary from the streets on the ground of its being a nuisance, they had no pretence for removing it from the stable, and were therefore not entitled to notice of action (r). "The act done," says Bayley, J., at p. 356, "must be of that nature and description that the party doing it may reasonably suppose that the Act of Parliament gave him authority to do it." And Littledale, J., adds, at p. 359, "I think, not only that the defendants had no authority, but that they had no colour or reasonable ground for supposing that they had authority to

dictum of Lord Denman, C.J., in *Lidster v. Borrow*, 9 A. & E. at p. 657. "A person fancying he fills a character which he does not fill cannot claim to be protected."

(q) *Jones v. Gooday*, 9 M. & W. 736.

(r) *Cook v. Leonard*, 6 B. & C. 351.

act as they did." These *dicta* certainly cannot stand by the side of later authorities, and the rule laid down in *Cook v. Leonard* has been criticised by Parke and Alderson, BB., in *Jones v. Gooday* (s), and by Lord Denman, C.J., in *Cann v. Clipperton* (t). "If that rule were to be strictly acted upon," says Alderson, B., "I concur entirely with my brother Parke in thinking it would take away the protection the Legislature intended to give officers acting in the execution of their duty, because it would impose on third persons the task of deciding in every case whether they had acted reasonably or not."

While, however, the later cases expressly decide that a reasonable belief is not necessary, they do not sanction a "mere fancy," a "general persuasion," or a "vague opinion" that a person is acting under the authority of a statute (u). "It would be wild work if a party might give himself protection by merely saying that he believed himself acting in pursuance of a statute, for no one can say what may possibly come into an individual's mind on such a subject" (x). There must be some grounds for the belief, and in their absence there is no claim to the protection of the statute. There must be "a belief in the existence of those facts which, if they had existed, would have afforded a justification" (y). Therefore, where a justice of the peace

There
must be
some
grounds
for such
belief.

(s) 9 M. & W. at pp. 743, 745. (t) 10 A. & E. at p. 588.

(u) *Cann v. Clipperton*, 10 A. & E. at p. 589, *per* Patteson, J.; *Kine v. Evershed*, 10 Q. B. at pp. 150, 151, *per* Lord Denman, C.J.

(x) *Cann v. Clipperton*, 10 A. & E. at p. 589, *per* Williams, J.

(y) *Herman v. Seneschal*, 13 C. B. N. S. 392; *Roberts v. Orchard*, 2 H. & C. 769.

ordered the medical examination of a girl charged with concealment of birth, it was held that he was not entitled to notice of action (z). Where a person was given in charge for attempting to break into a house, and the statute only justified such an arrest where the house was actually broken into, no notice of action was necessary (a). The same rule applies where a statute sanctions the apprehension of a person "found committing" certain specified offences. Although his arrest some time after the offence has been committed does not take away the necessity of notice of action if the person apprehending him really believes that he is acting under the statute (b), yet a mere belief that an offence has been committed is not sufficient without a belief that the person apprehended was "found committing" it (c). Therefore, where a pursuit takes place two hours after the offence is committed, there cannot be such a *bond fide* belief as will bring the case within the statute (d). So, too, where a cab proprietor indorsed a driver's licence—an act which could only be done by a magistrate—he was not allowed any notice of action, and the Court observed that he could not honestly believe he was a magistrate (e).

(z) *Agnew v. Jobson*, 47 L. J. M. C. 67.

(a) *Lecte v. Hart*, L. R. 3 C. P. 322.

(b) *Read v. Coker*, 13 C. B. 850.

(c) *Roberts v. Orchard*, 2 H. & C. 769; 33 L. J. Ex. 65.

(d) *Downing v. Capel*, L. R. 2 C. P. 461.

(e) *Heath v. Brewer*, 15 C. B. N. S. 803.

CHAPTER III.

THE CONSTRUCTION OF STATUTES.

THE object of all judicial construction of statutes is to ascertain the intention of the Legislature, and the method of attaining that object is to consider the whole of each statute, reading all its sentences grammatically in the order which has been adopted by its framers, and giving every word its full and proper meaning. Although this rule is not stated exactly in these words in any of the decisions from which it is deduced, every branch of it is supported by abundant authority.

General
rule of
construc-
tion.

First, with regard to the intention of the Legislature. It has always been held that this intention, when ascertained in a legitimate manner, is to guide and govern the construction of statutes. "The only rule for the construction of Acts of Parliament," says Tindal, C.J., "is that they should be construed according to the intent of the Parliament which passed them. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best

To ascer-
tain the
intention
of the
Legisla-
ture.

declare the intention of the lawgiver" (a). The older authorities are equally emphatic in declaring that the intention of the Legislature is chiefly to be regarded. "Whoever would consider an Act well ought always to have particular regard to the intent of it, and, according as the intent appears, he ought to construe the words" (b). Acts of Parliament "are always construed and expounded according to the intent and meaning of the parties thereto, and not by any strict or strained construction" (c).

It is true that when the earlier writers turn from the intention of the Legislature to the manner in which it is to be ascertained, they frequently use expressions which are open to misconception. In several instances they speak of the intention of the Legislature as if it was something separate from the language by means of which it is expressed. Thus Lord Coke says that every Act of Parliament consists of the letter and of the meaning of the makers of the Act (d). Thus, too, it is stated in Plowden: "Everything which is within the intent of the makers of the Act, although it be not within the letter, is as strongly within the Act as that which is within the letter and intent also" (e). And in another case: "The intent of statutes is more to be regarded and pursued than the precise letter of them, for oftentimes things

(a) *Sussex Peerage*, 11 Cl. & Fin. at p. 143.

(b) *Willion v. Berkley*, Plowd. at p. 231.

(c) *Butler and Baker's Case*, 3 Rep. at p. 27 b.

(d) 4 Inst. 324.

(e) *Stowel v. Lord Zouch*, Plowd. at p. 366.

which are within the words of statutes are out of the purview of them, which purview extends no further than the intent of the makers of the Act, and the best way to construe an Act of Parliament is according to the intent rather than according to the words" (*f*). Again, in a third case in the same reports we read: "The sages of the law heretofore have construed statutes quite different to the letter in some appearance, which expositions have always been founded upon the intent of the Legislature, which they have collected sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances; so that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion" (*g*). These expressions are not strictly accurate, and if they are taken as they stand they are apt to be misleading. They may indeed be properly considered as drawing a distinction between the letter and the spirit of an Act of Parliament, and as laying down the rule that the manifest object of a statute is not to be defeated by some apparent deficiency in its language (*h*).

Unfortunately these passages have induced some persons to embark in a discussion of the course

(*f*) *Eyston v. Studd*, Plowd. at p. 464. See also Bac. Abr. Tit. Statute I. 5, *People v. Utica Insurance Co.*, 15 Johnson, at p. 381.

(*g*) *Stradling v. Morgan*, Plowd. at p. 205.

(*h*) *Huxham v. Wheeler*, 3 H. & C. at p. 80, per Pollock, C.B.

that ought to be pursued when the words of a statute do not agree with the intention of the Legislature. Whether in such a case the words ought to prevail over the intention, or the intention over the words, might be an interesting question, were it not that any such discussion would proceed upon an entire forgetfulness of the leading principle of construction. The intention of the Legislature is to be ascertained by means of the words which it has used, and though these words are often modified, though their literal sense is not always adopted, though they are sometimes strained, transposed, treated as inadequate or as superfluous, they are still the only interpreters of the mind of the Legislature. "All Acts of Parliament," it is said in an early case, "shall be taken by reasonable construction to be collected out of the words of the Acts themselves, according to the true intent and meaning of the makers of the Act" (i). And in another case reported in the same volume it is stated that "the judges said they ought not to make any construction against the express letter of the statute, for nothing can so express the meaning of the makers of the Act as their own direct words, for *index animi sermo*. And it would be dangerous to give scope to make a construction in any case against the express words when the meaning of the makers doth not appear to the contrary, and when no inconvenience will thereupon follow; and therefore in such cases *a verbis legis non recedendum est*" (k). Similar

(i) *Lord Mountjoy's Case*, 5 Rep. 5 a, b.

(k) *Edrich's Case*, 5 Rep. at p. 118 b.

rules are laid down in more modern cases. "In construing an Act of Parliament our first business, I conceive, is to examine the words themselves which are used; and if in these there be no ambiguity it is seldom desirable to go further; the object is only to ascertain the mind of the Legislature as expressed in words" (*l*). "The Court knows nothing of the intention of an Act except from the words in which it is expressed, applied to the facts existing at the time" (*m*).

Thus, the intention of the Legislature is not to be made the subject of guess-work or of speculation, nor is it to be inferred from any other materials than those which are found within the statute. The Courts are not to "fish out what may possibly have been the intention of the Legislature" (*n*), or to speculate on the intention of the Legislature when the words it has used are plain (*o*), or to draw any general inference from the nature of the objects dealt with by a statute (*p*), or from a consideration of what might have been wise and prudent (*q*), or of what would have been done if an existing state of things had been contemplated by the Legislature (*r*), or to extend the language of a statute beyond its natural meaning for the purpose of including cases, simply because

Intention
is not to be
guessed at.

(*l*) *Pocock v. Pickering*, 18 Q. B. at pp. 797, 798, per Coleridge, J.

(*m*) *Logan v. Earl Courtown*, 13 Beav. 22; 20 L. J. Ch. 347.

(*n*) *Crawford v. Spooner*, 6 Moore's P. C. at p. 9, per Lord Brougham.

(*o*) *Samuel v. Nettleship*, 3 Q. B. at p. 192, per Patteson, J.; *Holt v. Miers*, 5 M. & W. at p. 173; *R. v. Latimer*, 15 Q. B. at p. 1080, per Coleridge, J.

(*p*) *Fordyce v. Bridges*, 1 H. L. C. 1.

(*q*) *Humfray v. Scroope*, 13 Q. B. pp. 512, 513.

(*r*) *R. v. Glamorganshire Canal Co.*, 3 E. & E. at p. 200.

no good reason can be assigned for their exclusion (s). "I cannot concede," says Coleridge, J., "that we are at liberty upon any ground whatever to add a new term to the statute. In saying this I am not unmindful of the *dicta* to be found in our books, nor of decisions upon old statutes which seem to warrant a more free dealing with the written law; and whenever Acts of Parliament shall again be framed with the generality and conciseness with which the Legislature spoke some centuries since, it may be fit to consider the soundness of that principle of interpretation which they involve; but it is enough to say that it is wholly inapplicable to a modern statute, in which the Legislature is careful to express all it intends in so many words that to go beyond their necessary implication is to make, not to interpret, law. The principle, then, on which I rely will not let in the consideration of particular circumstances in each case, or a regard to a greater or less degree of convenience, a more or less complete effect to be given to the presumed intent of the Legislature. Nothing, in short, which is founded on what the Legislature might better have done, or simply even what the Legislature intended; the sole legitimate inquiry is, I conceive, what intention is to be found in the words of the Act, expressed or implied; unless by words written, or words necessarily implied, and therefore virtually written, the intention has been declared, we cannot give effect to it" (t).

Acting upon the principle thus stated, the Courts

(s) *Denn v. Reid*, 10 Peters, 524; *Ogden v. Strong*, 2 Paine, 584.

(t) *Gwynne v. Burnell*, 7 Cl. & Fin. at p. 607.

have felt constrained to give the words of statutes their natural meaning, even when there was the strongest ground for supposing that such a construction was not consonant with the intention of the Legislature (*u*). In one case it was indeed suggested that if the words of an Act were ungrammatical and insensible, the Court might put such a meaning upon them as it conjectured they were originally intended to bear (*x*). But at other times a stricter rule has prevailed, and it has been held that where the words of an Act are useless and incapable of a meaning, and an alteration of those words would probably express what the Legislature intended, the Court cannot alter the words or supply the meaning (*y*). "We cannot aid the Legislature's defective phrasing of the Act," said Lord Brougham, in words similar to those which had been used by Lord Eldon (*z*); "we cannot add and mend and by construction make up deficiencies which are left there" (*a*).

For the same reason the intention of the Legislature is not to be inferred from any external evidence. If a statute is not clearly worded, its Parliamentary history is "wisely inadmissible" to explain it (*b*). The Court cannot consider what

Not to be
inferred
from
external
evidence.

(*u*) *R. v. Commissioners of Thames and Isis Navigation*, 5 A. & E. at p. 816, *per* Lord Denman, C.J.; *Nowell v. Mayor of Worcester*, 9 Ex. at p. 465, *per* Pollock, C.B.

(*x*) *Doe d. Davenish v. Moffatt*, 15 Q. B. at pp. 263, 264.

(*y*) *Green v. Wood*, 7 Q. B. at p. 185, *per* Lord Denman, C.J.

(*z*) *Weale v. West Middlesex Waterworks Co.*, 1 Jac. & Walk. at p. 371.

(*a*) *Crawford v. Spooner*, 6 Moore, P. C. at p. 9. See, too, *R. v. Mabe, Inhabitants*, 3 A. & E. at p. 534, *per* Lord Denman, C.J.

(*b*) *R. v. Hertford College*, L. R. 3 Q. B. D. at p. 707.

was the intention of the member of Parliament by whom any measure was introduced (*c*). It cannot look at the reports of commissions which preceded the passing of statutes, and upon which those statutes were founded. Thus it was held that the reports and recommendations of the Real Property Commissioners (*d*), of the Ecclesiastical Commissioners (*e*), of the Common Law (*f*) and of the Chancery (*g*) Commissioners, were not legitimate guides to the construction of statutes. So, too, the plans and sections of intended lines of railway, or of other works which are exhibited during the passage of bills through Parliament, are not, unless they are incorporated by reference in the Acts when passed, to be regarded in their construction (*h*). The Court cannot look at the history of a clause, or of the introduction of a proviso (*i*), nor at debates in Parliament (*k*), nor at amendments

(*c*) See *M'Master v. Lomax*, 2 Myl. & Keen, 32; *Cameron v. Cameron*, *ibid.* 289.

(*d*) *Salkeld v. Johnson*, 2 C. B. at p. 756, *per* Tindal, C.J.; *Farley v. Bonham*, 2 J. & H. 177; 30 L. J. C. 239.

(*e*) *Matter of Dean of York*, 2 Q. B. at p. 34.

(*f*) *Martin v. Hemming*, 24 L. J. Ex. at p. 5; 18 Jur. at p. 1004; *Arding v. Bonner*, 2 Jur. N. S. at p. 764.

(*g*) *Ewart v. Williams*, 3 Drew. 21, 24.

(*h*) *North British Rail. Co. v. Tod*, 12 Cl. & Fin. 722; *R. v. Caledonian Rail. Co.*, 16 Q. B. 19; *Beardmer v. L. and N. W. Rail. Co.*, 1 Macn. & G. 112, 1 Hall & Twells, 161; *Att.-Gen. v. G. E. Rail. Co.*, L. R. 7 Ch. 475, 6 H. L. 367; *Edinburgh Street Tramways Co. v. Black*, L. R. 2 Scotch Ap. 336; *Ware v. Regent's Canal Co.*, 3 De G. & J. 212, 28 L. J. C. 153; *R. v. Wycombe Rail. Co.*, L. R. 2 Q. B. at pp. 321, 322.

(*i*) *Barbat v. Allen*, 7 Ex. at p. 616; *R. v. Capel*, 12 A. & E. 382, 411.

(*k*) *R. v. Whittaker*, 2 C. & K. at p. 640; *Gorham v. Bishop of Exeter*, 5 Ex. at p. 667.

and alterations made in Committee (*l*), nor at the principles which govern the Houses of Parliament in passing private bills (*m*), nor at the policy of the Government with reference to any particular legislation (*n*).

While, however, this rule is followed, a broad distinction must be made between the history of any particular measure, or part of any measure, and the general history of law and legislation. As it is the duty of the judges to construe every statute “in conformity with the Common Law rather than against it, except so far as the statute is plainly intended to alter the course of the Common Law” (*o*), it is necessary for them to consider what was the course of the Common Law at the time when any statute was passed. “To know what the Common Law was before the making of any statute (whereby it may be known whether the Act be introductory of a new law or affirmatory of the old) is the very lock and key to set open the windows of the statute” (*p*). “Although the Court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of law and legislation tells

But the previous state of the law to be remembered.

(*l*) *Donegall v. Layard*, 8 H. L. C. at pp. 465, 472, 473; *Att.-Gen. v. Sillem*, 2 H. & C. at pp. 521, 522.

(*m*) *R. v. London Dock Co.*, 5 A. & E. at p. 175.

(*n*) *Hadden v. The Collector*, 5 Wallace, 107.

(*o*) *R. v. Morris*, L. R. 1 C. C. R. at p. 95, *per* Byles, J. See also *Arthur v. Bokenham*, 11 Mod. at p. 150, *per* Trevor, C.J.

(*p*) 2 Inst. 307; see also *Giles v. Grover*, 1 Cl. & Fin. at p. 220, *per* Lord Tenterden, C.J.; *Fellowes v. Clay*, 4 Q. B. at p. 326, *per* Williams, J.; *Att.-Gen. v. Earl Powis*, Kay, at p. 207, *per* Wood, V.-C.; *Swanton v. Goold*, 9 Ir. C. L. R. at p. 237, *per* Lefroy, C.J.

the Court, and prior judgments tell this present Court, what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view of finding out what it means, and not with a view of extending it to something that was not intended" (q).

Rules in
Heydon's
Case.

The rule on this subject was laid down long ago in words which have been often quoted, and have received the sanction of the greatest authorities. "It was resolved by the Barons of the Exchequer," says Lord Coke, "that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discussed and considered: 1st. What was the Common Law before the making of the Act; 2nd. What was the mischief and defect for which the Common Law did not provide; 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; and 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief and *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*" (r).

The whole
Act to be
considered.

The next branch of the general rule for the construction of statutes is that the whole of each Act

(q) *Holme v. Guy*, L. R. 5 Ch. D. at p. 905, *per* Jessel, M.R.

(r) *Heydon's Case*, 3 Rep. at p. 7 b.

must be considered. This principle was most distinctly stated in the early authorities, and in more modern times it has been as fully recognised, and has formed the basis of what is called "the golden rule for the construction of statutes" (s). We find Lord Coke using these words:—"Every Act of Parliament upon consideration had of all the parts thereof together is the best expositor of itself" (t). Again:—"It is the most natural and genuine exposition of a statute to construe one part of the statute by another part of the same statute, for that best expresses the meaning of the makers" (u). "The office of a good expositor of an Act of Parliament is to make construction on all the parts together, and not of one part only by itself; *nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegit*" (x). "The best expositors of all Acts of Parliament are the Acts of Parliament themselves by construction and conferring all the parts of them together, *optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum*" (y). Very similar expressions are to be found in later cases both in England and the United States. Thus it is said by Best, C.J.:

(s) *Woodward v. Watts*, 2 E. & B. at p. 454, *per* Crompton, J.; in whose opinion, however, "the golden rule is not of much practical use;" *Mattison v. Hart*, 14 C. B. at p. 385, *per* Jervis, C.J.; *Eastern Counties Rail. Co. v. Marriage*, 9 H. L. C. at p. 40, *per* Blackburn, J.; *Wear Commissioners v. Adamson*, L. R. 2 App. Cas. at p. 764, *per* Lord Blackburn.

(t) 4 Inst. 325.

(u) Co. Litt. 381 a.

(x) *Lincoln College Case*, 3 Rep. 59 b.

(y) *Bonham's Case*, 8 Rep. 117 a, b.

“The intent of the Legislature is not to be collected from any particular expression, but from a general view of the whole of an Act of Parliament” (2). Erle, J. : “According to the general rule the words of a statute should be construed in their ordinary sense, so as to give effect to all its parts” (a). Coleridge, J. : “We must look to the whole scope of the Act in order to understand it” (b). Lord Tenterden, C.J. : “In construing Acts of Parliament we are to look not only at the language of the preamble, or of any particular clause, but at the language of the whole Act. And if we find in the preamble, or in any particular clause, an expression not so large or extensive in its import as those used in other parts of the Act, and upon a view of the whole Act we can collect, from the more large and extensive expressions used in other parts, the real intention of the Legislature, it is our duty to give effect to the larger expressions, notwithstanding the phrases of less extensive import in the preamble, or in any particular clause” (c). In the United States it has been said : “In construing any part of a law the whole must be considered : the different parts reflect light on each other ; and, if possible, such a construction is to be made as will avoid any contradiction or inconsistency” (d). “In putting a construction upon any statute every part shall be

(2) *East India Interest*, 3 Bing. at p. 196.

(a) *R. v. Abp. Canterbury*, 11 Q. B. at p. 566. See also *Newton v. Nancarrow*, 15 Q. B. at p. 152.

(b) *R. v. Combe*, 13 Q. B. at p. 183.

(c) *Doe d. Bywater v. Brandling*, 7 B. & C. at p. 660.

(d) *Commonwealth v. Duane*, 1 Binney, at pp. 607, 608.

regarded, and it shall be so expounded, if practicable, as to give some effect to every part of it" (e). "Every part is to be viewed in connection with the whole, so as to make all the parts harmonise, if practicable, and give a sensible and intelligible effect to each" (f). This rule applies most forcibly when there is any ambiguity in the language employed by the Legislature. In that case we are more especially bound to consider what is the object of the whole Act, and what is the light thrown upon that object by every part of the statute. We may look chiefly at the preamble as stating "the ground and cause of making the statute," and as being "a key to open the minds of the makers of the Act, and the mischief which they intended to redress" (g). But we must also examine the context, and the other clauses of the Act, for words which are obscure and ambiguous in one sentence may have a definite meaning in another (h).

When we examine what is called the "golden rule," we see that its main significance lies in the effect it gives to this principle. The rule itself is stated by Parke, B. : "It is a very useful rule in the construction of a statute to adhere to

The "golden rule" for the construction of statutes.

(e) *Commonwealth v. Alger*, 7 Cushing, at p. 89.

(f) *Oyden v. Strong*, 2 Paine, at p. 587.

(g) *Sussex Peerage*, 11 Cl. & Fin. at p. 143, *per* Tindal, C.J., who cites the words of Chief Justice Dyer, in *Stowel v. Lord Zouch*, Plowd. at p. 369 ; see also *Warburton v. Loveland*, 2 Dow. & Clark, at p. 489 ; *Denn v. Reid*, 10 Peters, at p. 527.

(h) *Stowel v. Lord Zouch*, Plowd. at p. 365 ; *Arthur v. Bokenham*, 11 Mod. at p. 161, *per* Trevor, C.J. ; *R. v. Palmer*, 1 Leach, C. C. at p. 355 ; *Paddon v. Bartlett*, 3 A. & E. at p. 896, *per* Lord Abinger, C.B. ; *Lord Fermoy's claim to vote*, 5 H. L. C. at p. 745, *per* Crowder, J.

the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further" (*i*). The slight variations in the statement of this rule, to be found in the many other decisions of the same judge which deal with the same subject, leave its effect substantially unaltered. The result of these several statements is that in construing any statute the Court should adhere to the ordinary meaning of the words used, and to their grammatical construction, unless the words when so read produce some manifest absurdity or injustice, inconsistency, inconvenience or incongruity (*k*); or unless the meaning so given be repugnant to the context (*l*), or at variance with the intention of the Legislature as it is stated expressly or by implication, or as it may be collected from other parts of the same statute (*m*).

Followed
by most of
the judges.

Similar phrases have been used by many other judges, even when they have not expressly sanctioned the rule to which Parke, B., gave such pro-

(*i*) *Beeke v. Smith*, 2 M. & W. at p. 195.

(*k*) *Perry v. Skinner*, 2 M. & W. at p. 476; *Lucey v. Ingram*, 6 M. & W. at p. 316; *Edmonds v. Lawley*, 6 M. & W. at p. 289; *Brown v. McMillan*, 7 M. & W. at p. 202.

(*l*) *R. v. Diteheat, Inhabitants*, 9 B. & C. at p. 186; *R. v. Banbury, Inhabitants*, 1 A. & E. at p. 142.

(*m*) *Turner v. Sheffield and Rotherham Rail. Co.*, 10 M. & W. at p. 434; *Steward v. Greaves*, 10 M. & W. at p. 719; *Miller v. Salomons*, 7 Ex. at p. 546; *R. v. Pease*, 4 B. & Ad. at p. 41.

minence. The necessity of modifying language so as to avoid injustice or absurdity is admitted by Cresswell, J. (*n*), by Jervis, C.J. (*o*), by Lord Campbell, C.J. (*p*), by Alderson, B. (*q*), by Martin, B. (*r*), and other judges. Both Maule, J. (*s*) and Byles, J. (*t*) state that the general rule "which requires that the words of an Act of Parliament should be read in their natural and ordinary sense, giving them a meaning to their full extent and capacity," need not be strictly followed where it would lead to some inconvenience which could not have been absent from the mind of the framers of the Act. That inconsistency with other parts of the same Act, and repugnance to the intention of the Legislature are, if possible, to be avoided, appears from the words of Littledale, J. (*u*), of Coleridge, J. (*x*), of Hill, J. (*y*), of Willes, J. (*z*), and of Irish and American judges (*a*). "The rule as to grammatical construction," says Pollock, B., "is subject to this condition, that however plain the apparent grammatical construc-

(*n*) *Wansey v. Perkins*, 7 M. & G. at p. 142.

(*o*) *Mattison v. Hart*, 14 C. B. at p. 385.

(*p*) *R. v. Met. Commissioners of Sewers*, 1 E. & B. at p. 701.

(*q*) *Att.-Gen. v. Lockwood*, 9 M. & W. at p. 398.

(*r*) *Att.-Gen. v. Hallett*, 3 H. & N. at p. 374.

(*s*) *Arnold v. Ridge*, 13 C. B. at p. 763.

(*t*) *Birks v. Allison*, 13 C. B. N. S. at p. 23.

(*u*) *Giles v. Grover*, 1 Cl. & Fin. at p. 184.

(*x*) *R. v. Poor Law Commissioners*, in the matter of the *Parish of St. Pancras*, 6 A. & E. at p. 7; *Barton v. Bricknell*, 13 Q. B. at p. 396.

(*y*) *R. v. Leatham*, 3 E. & E. at p. 669.

(*z*) *Motteram v. Eastern Counties Rail. Co.*, 7 C. B. N. S. at p. 80.

(*a*) *Warburton v. Loveland*, 1 Hudson & Brooke, at p. 648; *Quin v. O'Keeffe*, 10 Ir. C. L. R. 393; *U. S. v. Bassett*, 2 Story, 389.

tion of a sentence may be, if it be perfectly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which upon the whole is the true meaning shall prevail in spite of the grammatical construction of a particular part of it" (b). And in addition to these instances of judicial agreement with the various parts of the rule laid down by Parke, B., we find the whole of that rule approved by Lord Blackburn: "I believe it is not disputed that what Lord Wensleydale used to call the golden rule is right; viz., that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity, or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, and to justify the Court in putting on them some other signification which, though less proper, is one which the Court thinks the words will bear" (c).

To what
extent it
prevails.

Although the language used both by Parke, B., and by many of the other judges, is very wide, a careful consideration will show that it does not go beyond the fair limits of judicial construction. It is plain that the absurdity, injustice, inconsistency, inconvenience, and incongruity which are, if possi-

(b) *Wough v. Middleton*, 8 Ex. at p. 357. See also *U. S. v. Fisher*, 2 Cranch Sup. Court, at p. 399, *per* Washington, J.

(c) *Wear Commissioners v. Adamson*, L. R. 2 Ap. Cas. at pp. 764, 765. See also *Eastern Counties Rail. Co. v. Marriage*, 9 H. L. C. at p. 40, *per* Blackburn, J.

ble, to be avoided, must be such as an examination of the statute itself and a comparison of all its parts would disclose. In an early case it had been stated that "upon all Acts of Parliament there must be such a construction made as that one clause may not destroy and frustrate another" (*d*). And a similar principle is laid down by Willes, J., when he says that such words as repugnance or absurdity are used "in the sense of being contrary to the mind and intention of the framers of the Act" (*e*). There must be, says the same judge, a repugnance between the words of the section to be construed and those of some other section in the same Act, or in some other Act which is *in pari materia* (*f*).

On the same ground Crompton, J., in commenting on what is called the golden rule, observes: "I do not understand it to go so far as to authorise us, where the Legislature have enacted something which leads to an absurdity, to repeal that enactment and make another for them if there are no words to express that intention" (*g*). Inconsistency is, in another case (*h*), explained by Parke, B., as meaning an inconsistency apparent on the face of the statute, and not one that arises from local circumstances, which may never have been known to the Legislature. Thus restricted the rule is most valuable as a guide to the construction

(*d*) *Stevens v. Duckworth*, Hardres, at p. 344, *per* Atkyns, B.

(*e*) *Motteram v. Eastern Counties Rail. Co.*, 7 C. B. N. S. at p. 80.

(*f*) *Abel v. Lee*, L. R. 6 C. P. p. 371. See also *Wilson v. Wilson*, L. R. 2 P. & D. at p. 347, *per* Bramwell, B.

(*g*) *Woodward v. Watts*, 2 E. & B. at p. 458.

(*h*) *Smith v. Bell*, 10 M. & W. 378.

of statutes. It gives no scope for general considerations of policy or convenience, which would unsettle all the established principles of judicial interpretation.

Consequences
are not to
be re-
garded.

If the Courts were at liberty to travel out of the words of any particular Act of Parliament, and to consider what would in any case be the consequence of giving those words their natural meaning, they would become legislators and not interpreters. It has therefore been distinctly stated from early times down to the present day that judges are not to mould the language of statutes in order to meet an alleged convenience or an alleged equity (*i*); are not to be influenced by any notions of hardship (*k*), or of what in their view is right and reasonable (*l*) or is prejudicial to society (*m*); are not to alter clear words, though the Legislature may not have contemplated the consequences of using them (*n*); are not to tamper with words for the purpose of giving them a construction which is "supposed to be more consonant with justice" than their ordinary meaning (*o*). "Where the language of an Act of Parliament is clear and explicit, effect must be given to it whatever may be the consequences, for in that case the words of the statute speak the intention of the Legisla-

(*i*) *R. v. Poor Law Commissioners*, 6 A. & E. at p. 7, *per* Coleridge, J.

(*k*) *Rhodes v. Smethurst*, 4 M. & W. at p. 63, *per* Lord Abinger, C.B.

(*l*) *Abel v. Lee*, L. R. 6 C. P. at p. 371, *per* Willes, J.

(*m*) *Brook v. Badley*, L. R. 4 Eq. at p. 111, *per* Lord Romilly, M.R.

(*n*) *R. v. Whissendine, Inhabitants*, 2 Q. B. at p. 454.

(*o*) *Ornamental Woodwork Co. v. Brown*, 2 H. & C. at p. 69, *per* Martin, B.

ture" (*p*). "Where the law is known and clear, though it be inequitable and inconvenient, the judges must determine as the law is without regarding the inequitableness or inconveniency" (*q*). "The premises must be clear out of the established law, and the conclusion well deduced before great inconveniences be admitted for law. But if inconveniences necessarily follow out of the law only the Parliament can cure them" (*r*).

Our next proposition is that all the sentences of an Act are to be read grammatically in the order which has been adopted by its framers, and that every word is to have its full and proper meaning. This branch of the general rule, which was stated at the beginning of this chapter, has been already illustrated by several of the passages cited in support of another principle (*s*). We need not do more than refer to one or two additional cases, dealing with the course which is to be adopted as to the collocation of words and the order of sentences (*t*).

The necessity of giving effect to all the words of a statute (*u*), "nothing adding thereto, nothing

Sentences to be read grammatically.

Effect to be given to all the words of the statute.

(*p*) *Warburton v. Loveland*, 2 Dow. & Clark, at p. 489, *per* Tindal, C.J.

(*q*) *Dixon v. Harrison*, Vaughan, 37. See also *R. v. Skeen*, Bell's C. C. at p. 115, *per* Lord Campbell, C.J.; *Abley v. Dale*, 11 C. B. at p. 391, *per* Jervis, C.J.

(*r*) *Craw v. Ramsey*, Vaughan, 285, reported as *Crow v. Ramsey*, T. Jones, 10.

(*s*) *Ante*, pp. 111—114.

(*t*) *R. v. Ramsgate, Inhabitants*, 6 B. & C. at p. 715, *per* Bayley, J.; *Rein v. Lane*, L. R. 2 Q. B. at p. 151, 8 B. & S. p. 90, *per* Blackburn, J.; *Newell v. People*, 3 Selden, at p. 97, *per* Johnson, J.; *Cull v. Austin*, L. R. 7 C. P. at p. 234, *per* Brett, J.

(*u*) *Isberg v. Bowden*, 8 Ex. at p. 860.

diminishing" (x), which has been often recognised, gives rise to some further considerations. It is clearly and distinctly laid down as "a settled canon of construction that a statute ought to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant" (y). But when this principle has to be acted upon it is sometimes necessary for the judges to choose between inserting and omitting words, between giving no effect to one part of an Act and giving another part an effect which its language does not warrant. In one instance it was held that words could not be omitted, although they had the extraordinary result of giving an appeal from one quarter sessions to another (z). More than one case has decided that words cannot be inserted, unless their introduction is absolutely necessary to make an Act consistent with itself, and to avoid something manifestly absurd or repugnant (a).

Instances
in which
words
have been
inserted.

We may assume that the Courts have acted upon this principle in the following instances in which words have been inserted. Where an Act

(x) *Everett v. Wells*, 2 Scott, N. R. at p. 531, *per* Tindal, C.J.

(y) *R. v. Bishop of Oxford*, L. R. 4 Q. B. D. at p. 261. It is worthy of remark that these words, which now rest upon the authority of the Queen's Bench Division of the High Court of Justice, are cited by Bacon in his Abridgment, and by Sir F. Dwaris in his work on Statutes, not from any judgment, but from the "intended argument" of Sir B. Shower, in a case where judgment was given against a demurrer because no one appeared to support it. See *R. v. Berchet*, 1 Show. 108; Bac. Abr. Statute, I. 2; Dwaris, p. 508.

(z) *R. v. West Riding Justices*, 1 Q. B. at p. 329.

(a) *King v. Burrell*, 12 A. & E. 460, 468; *Williams v. Roberts*, 1 C. M. & R. at p. 680, *per* Parke, B.; *Ellis v. O'Neill*, 4 Ir. C. L. R. at p. 478.

mentioned the sum of money to be paid by way of compensation for the damage occasioned to any lands, the Court of Queen's Bench supplied the words "to the owner or party interested," as having been omitted by accident (*b*). So where the 12 & 13 Vict. c. 103, provided that "all the costs and expenses incurred . . . in and about the obtaining any order of justices for the removal and maintenance of a lunatic pauper" should be borne by the common fund of the union, the Court repeated the words "in and about the" before the word "maintenance," so that the expense of maintaining the pauper lunatic might also be defrayed by the union (*c*). Again, the Fines and Recoveries Act (3 & 4 Wm. IV. c. 74, s. 33) enacted that if any protector of a settlement was convicted of treason or felony, or was an infant, or if it was uncertain whether he were living or dead, the Court of Chancery should be protector of the settlement "in lieu of the person who shall be an infant, or whose existence cannot be ascertained." It was held that the Court of Chancery was also protector in the place of any one convicted of treason or felony, as any other construction would give no effect to those words (*d*). A similar construction was placed upon the Highway Act, 1835 (6 & 7 Wm. IV. c. 50). Section 78 of that Act provided, "if any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously . . . every person so offending . . . shall

(*b*) *Jubb v. Hull Dock Co.*, 9 Q. B. at p. 455.

(*c*) *Wigton Overseers v. Snaith Overseers*, 16 Q. B. 496.

(*d*) *Re Wainwright*, 1 Phillips, 258.

. . . for every such offence forfeit any sum not exceeding £5 in case such driver shall not be the owner of such waggon, cart, or other carriage, and in case the offender be the owner of such waggon, cart, or other carriage, then any sum not exceeding £10." It was held that a person riding furiously was liable to the smaller penalty, as, if he were not, no effect would be given to the words "ride" and "riding" (*e*). But the Court refused to extend in the same manner the 18 & 19 Vict. c. 108, which enacted that if any loss of life occurred by reason of any accident in a coal mine, or if any serious personal injury arose from explosion therein, the owner or agent of such mine should "within twenty-four hours next after such loss of life," send notice of such accident to the inspector of the district. It was held that no such notice need be sent within twenty-four hours after an explosion which caused serious personal injury (*f*). It is clear that the effect of this last decision is to omit altogether from the Act the words which deal with serious personal injury. But the effect of the two former decisions was to insert, or to repeat in the latter part of the two sections, the words referring to a conviction for treason or felony, and to furious riding.

Perhaps in all these cases it may be said that "the Court will rather strain words in order to arrive at a construction which is evidently intended by the policy of the Legislature than omit them, or declare the state of facts which has occurred a

(*e*) *Williams v. Evans*, L. R. 1 Ex. D. 277.

(*f*) *Underhill v. Longridge*, 29 L. J. M. C. 65.

casus omissus” (*g*). Acting on this principle the Courts have sometimes corrected obvious mistakes in the words of statutes rather than deprive those words of all meaning. Thus, where an Act stated correctly the title of another Act, but made a mistake in giving its date (*h*), where the recital of the title of another Act made some changes in its language (*i*), where chapter eight was referred to instead of chapter eighteen (*k*), it was held that these errors were immaterial (*l*). Again, where a statute provided that any person who “shall” do a certain act “and shall be thereof convicted” was to be liable to indictment, and upon conviction to a certain punishment, the words “and shall be thereof convicted” were rejected as surplusage, because they implied that an offender must be convicted before he could be indicted (*m*). We may apply to such cases the words used by Coleridge, J.: “It is utterly impossible to construe a statute worded as this is so as to give a meaning to every word. If we attempted to do so we should make the Act insensible. We must construe this section not literally, but so as to give it a reasonable meaning” (*n*).

Instances
in which
mistakes
have been
corrected.

We have now to consider what is the full and

Meaning
of words.

(*g*) *R. v. Sugden*, 1 Ir. Jur. (O.S.) 58.

(*h*) *Re Boothroyd*, 15 M. & W. 1; *R. v. Willcock*, 7 Q. B. 317; 14 L. J. M. C. 104.

(*i*) *R. v. Longmead*, 2 Leach, C. C. 694.

(*k*) *Waterloot Turnpike Co. v. M'Kean*, 6 Hill, 616.

(*l*) See, however, *Keene v. U. S.*, 5 Cranch Sup. Court, 304, and *Blanchard v. Sprague*, 3 Sumner, 279.

(*m*) *U. S. v. Stern*, 5 Blatchford's Circuit Court Rep. 512.

(*n*) *R. v. East Ardsley, Inh.*, 14 Q. B. at p. 801.

Ordinary
gramma-
tical mean-
ing.

proper meaning which is to be given to the words in a statute. The first rule on this subject is that words are to have their ordinary grammatical meaning (*o*), that which naturally and obviously belongs to them (*p*), and has been given them by common usage, in the common language of mankind (*q*). They are to be read in their largest ordinary sense unless there is anything to restrict them either in the occasion on which they are used or in the context (*r*).

Popular
meaning.

Many instances may be given to show that the popular sense of words is the one generally adopted in the construction of statutes. A popular meaning has been assigned to the words "town" (*s*), "hospital" (*t*), "insolvent circumstances" (*u*), "exported from a port" (*x*), "afternoon Divine service" (*y*). An Act requiring a person to sign his

(*o*) *Bodenham Overseers v. St. Andrew's Overseers*, 1 E. & B. at p. 469, *per* Coleridge, J.; *Cull v. Austin*, L. R. 7 C. P. at p. 234, *per* Brett, J.

(*p*) *Martin v. Hunter's Lessee*, 1 Wheaton, 326, *per* Story, J.

(*q*) *Per* Lord Tenterden, C.J. *R. v. Winstanley*, 1 Cr. & J. at p. 444; *Att.-Gen. v. Winstanley*, 2 Dow. & Cl. at p. 310.

(*r*) *Hughes v. Overseers of Chatham*, 5 M. & G. at p. 80, *per* Tindal, C.J. It is the duty of the Court to restrain the operation of a statute within narrower limits than the words import, if it is satisfied that the literal meaning of the words would extend to cases which the Legislature never intended to include. *Brewer's Lessee v. Blougher*, 14 Peters, 178, 198.

(*s*) *Elliott v. South Devon Rail. Co.*, 2 Ex. 725; *R. v. Cottle*, 16 Q. B. 412; *L. & S. W. Rail. Co. v. Blackmore*, L. R. 4 H. L. 610, 615.

(*t*) *Lord Colchester v. Kewney*, 4 H. & C. 445.

(*u*) *Teale v. Younge, M'Clel. & Y.* 497; *Bayly v. Schofield*, 1 M. & S. at p. 350; see *Re Birmingham Benefit Society*, 3 Sim. 421, for different words which have received a technical meaning.

(*x*) *Muller v. Baldwin*, L. R. 9 Q. B. 457. See *Att.-Gen. v. Pougett*, 2 Price, 381.

(*y*) *R. v. Knapp*, 2 E. & B. 447.

name is obeyed if he employs his usual signature, denoting his Christian name by an initial (*z*), or if he uses a stamp (*a*). An Act which avoids any contract made by a bankrupt after filing his petition, extends to a bond given by him after that time, and is not confined to simple contracts (*b*). The Succession Duty Act is to be construed not according to the technicalities of the law of real property, but according to the popular use of the language employed (*c*), and, as it extends to the United Kingdom, the technicalities of both Scotch and English law are to be disregarded (*d*). The Representation of the People Act, 1867, giving the franchise to every "man" possessed of a certain qualification, does not enfranchise women, because although (by 13 & 14 Vict. c. 21) "in all Acts words importing the masculine gender shall be deemed and taken to include females," the word "man" in the ordinary and popular sense of words is used in contradistinction to the word "woman" (*e*).

For the same reason words which are chiefly used in certain branches of commerce, and have acquired a popular meaning by reason of such use, will in general be so construed when they occur in statutes. Thus where a duty was imposed on "spirits," it was held that "sweet spirits of nitre,"

(*z*) *R. v. Avery*, 18 Q. B. 576.

(*a*) *Bennett v. Brumfitt*, L. R. 3 C. P. 28.

(*b*) *Kidson v. Turner*, 3 H. & N. 581.

(*c*) *Lord Braybrooke v. Att.-Gen.*, 9 H. L. C. at p. 165.

(*d*) *Lord Saltoun v. Adv.-Gen.*, 3 Macq. Sc. Ap. 659, 671.

(*e*) *Chorlton v. Lings*, L. R. 4 C. P. 374. It is true this was not the only ground of the decision.

a known article of commerce not usually passing under the name of spirits, although spirits entered largely into its composition, was not liable to the duty (*f*). Thus, too, "gold and silver" does not mean pure gold or silver (*g*), a "square" of plate glass means any rectangular figure (*h*), worsted, though made from wool by combing, is not liable to a duty as a manufacture of which wool is a component part, because it has become "a distinct article known in commerce under the denomination of worsted" (*i*); bohea tea is "that article which in the known usage of trade has acquired that distinctive appellation" (*k*); and the word "purchaser" in the Bankruptcy Act, 1869, a special code of law, laying down general rules for commercial men, is to be taken in the ordinary commercial sense of buyer, and not in the technical meaning which the law has ascribed to it (*l*).

Unless
technical
meaning
has been
acquired.

Although in the case last cited the popular prevailed over the technical sense, it is a general rule that "when the Legislature uses technical language in its statutes, it is supposed to attach to it its technical meaning, unless the contrary manifestly appears" (*m*). Such language is no doubt employed for the purpose of escaping the difficulties caused by the use of merely popular expressions

(*f*) *Att.-Gen. v. Bailey*, 1 Ex. 281.

(*g*) *Young v. Cook*, L. R. 3 Ex. D. 101.

(*h*) *Att.-Gen. v. Cast Plate Glass Co.*, 1 Anstr. 39.

(*i*) *Elliott v. Swartwout*, 10 Peters, 137.

(*k*) *Two Hundred Chests of Tea*, 9 Wheaton, at p. 439, *per* Story, J.

(*l*) *Ex parte Hillman, re Pumfrey*, L. R. 10 Ch. D. 622.

(*m*) *Burton v. Reeve*, 16 M. & W. at p. 309, *per* Parke, B.; 1 Kent's Com. 462.

in regard to matters precise and technical in their nature, such as the title to land or the vesting of estates (*n*) or other legal subjects. Thus, in applying the Statutes of Limitations to India, the Court construed the words "beyond the seas" as equivalent to "out of the realm," instead of giving them their literal meaning (*o*). In construing the Public Health Act, 1848, which defines the "owner" of premises as the person who receives the rack-rent, or would receive it if the premises were let at a rack-rent, the Court held that the trustee of premises used as a school came within the definition of owner as supplied by the Act (*p*). So, too, the phrase "taxed cart" in a Turnpike Act does not mean a cart upon which a tax has been paid, but a cart to which that technical name had been given (*q*). The word "sue" refers to a proceeding by action, and does not include a bankruptcy petition (*r*).

In some cases it seems doubtful whether the Courts have treated technical language as if it were popular, or have sacrificed the popular meaning of words to an extreme technicality. In dealing with bankruptcy law one Court decided that a judgment in an action of tort was a "debt *bonâ fide* contracted" (*s*), while another held that the words "a debt contracted" referred only to debts arising *ex contractu* (*t*).

(*n*) *Deptford Churchwardens v. Sketchley*, 8 Q. B. at p. 408.

(*o*) *Ruckmabhoy v. Lulloobhoy Mottickund*, 8 Moore, P. C. 4, 20.

(*p*) *Bowditch v. Wakefield Local Board*, L. R. 6 Q. B. 567.

(*q*) *Williams v. Lear*, L. R. 7 Q. B. 285.

(*r*) *Guthrie v. Fisk*, 3 B. & C. 178.

(*s*) *Robinson v. Vale*, 2 B. & C. 762.

(*t*) *Ex parte Clayton*, L. R. 5 Ch. 13.

Unless
popular
meaning at
variance
with
proper
meaning.

Another exception to the rule which requires the words of statutes to be read according to their popular meaning is to be found where the popular meaning is a corruption of the genuine sense of the word. In such a case it is often necessary to trace the history of some particular word, and to show what it meant from the earliest ages down to the time of the passing of a statute, for this, "both on legal principles of interpretation and according to the plain common sense of mankind, is a proper mode of arriving at its true meaning" (u). Where the true meaning of the word has survived any popular corruption, and can be ascertained in a legitimate manner, it must be adopted in the construction of statutes. Thus where an inclosure Act reserved to the lord of the manor the right to "minerals," it was held that this word, "though more frequently applied to substances containing metals, in its proper sense includes all fossil bodies or matters dug out of mines," and, therefore, extended to beds of stone instead of being restricted to metallic minerals (x). In like manner when the Mutiny Act, 1864, exempted soldiers on their march from tolls payable upon the passage over any bridge, it was held that soldiers on their march were liable to tolls for the use of a structure which was called a floating bridge, but was really in the nature of a steam ferry (y). Again, it was provided by 4 & 5 Wm. IV. c. 76, that any relief given to or on account of any child or children, under the

(u) *R. v. Archbishop of Canterbury*, 11 Q. B. at p. 580, per Coleridge, J.

(x) *Earl of Rosse v. Wainman*, 14 M. & W. 859; 2 Ex. 800.

(y) *Ward v. Gray*, 6 B. & S. 345.

age of sixteen, of any widow should be considered as given to the widow. It was held that such relief was given to the children also (z). The same desire to give words their proper meaning was shown in certain decisions upon the Acts which dealt with the regulation of theatres. It was held that a portable booth which was used as a theatre was not "a house or other place of public resort for the public performance of stage plays" (a), nor "a house or tenement used as an unlicensed theatre" (b), but that it was "a place not duly licensed as a theatre" (c). A decision upon the Stannaries Act, 1869, may be referred to the same principle. That Act provided that a call might be made at a meeting of a company, and it was held that one shareholder could not constitute a meeting (d).

In all cases, however, it is essential to bear in mind that the words used in statutes must have a reasonable meaning (e). It is said in one of the early decisions that "when laws or statutes are made, yet there are certain things which are exempted and excepted out of the provisions of the same by the law of reason, although they are not expressly excepted. As the breaking of prison is felony in the prisoner himself by the statute *de*

Words
always to
receive a
reasonable
meaning.

(z) *R. v. Shavington-cum-Gresty, Inhabitants*, 17 Q. B. 48; 20 L. J. M. C. 194.

(a) *Davys v. Douglas*, 4 H. & N. 180; 28 L. J. M. C. 193.

(b) *Fredericks v. Howie*, 1 H. & C. 381; 31 L. J. M. C. 249.

(c) *Fredericks v. Payne*, 1 H. & C. 584; 32 L. J. M. C. 14.

(d) *Sharp v. Dawes*, L. R. 2 Q. B. D. 26.

(e) *Churchwardens of Birmingham v. Shaw*, 10 Q. B. at p. 878.

"If words are susceptible of a reasonable and also of an unreasonable meaning, the former must prevail." *Boon v. Howard*, L. R. 9 C. P. at p. 308, *per* Keating, J.

frangentibus prisonam (1 Ed. II., stat. 2), yet if the prison be on fire, and they who are in it break the prison to save their lives, this shall be excused by the law of reason, and yet the words of the statute are against it" (*f*). Another case in the same volume lays down "that which law and reason allows shall be taken to be in force against the words of statutes" (*g*). Elsewhere we meet with similar expressions. "The words of a statute ought not to be expounded to destroy natural justice" (*h*). "Acts of Parliament are to be so construed as no man that is innocent or free from injury or wrong be by a literal construction punished or endamaged" (*i*). "The words of an Act of Parliament must be taken in a lawful and rightful sense" (*k*). The rule thus laid down has been in more recent times followed in the United States, where it was held that a sheriff, who arrested the carrier of a mail under a bench warrant on a charge of murder, was not liable to be indicted for knowingly and wilfully obstructing and retarding the passage of the mail or its carrier (*l*). In deciding this case, the American judges referred to the case of the prisoner breaking prison, and to a passage in Puffendorff upon the law of Bologna, which enacted that whoever drew blood in the streets should be punished with the utmost severity, but which was held not to extend

(*f*) *Reniger v. Fogassa*, Plowd. 13.

(*g*) *Partridge v. Strange*, Plowd. 77, 88.

(*h*) *Rawson v. Barge*, Styles, 81.

(*i*) Co. Litt. 360a.

(*k*) Co. Litt. 381b.

(*l*) *U. S. v. Kirby*, 7 Wallace, 482.

to the case of a surgeon bleeding a man who fell down in a fit.

These, indeed, are extreme instances, but there are many cases of a less startling character, in which the Court has acted on the same principle. Sometimes the most reasonable sense which can be given to words does little or no violence to their ordinary meaning. Thus it was held that an Act requiring a notice to be affixed to "the doors of all the churches" was reasonably complied with if a notice was affixed, not to every door, but to the principal door of every church (*m*). Where the Metropolitan Paving Act made "dust, cinders and ashes" the property of the scavengers, it was held that they were not entitled to metallic ashes, which were not mere rubbish, but were available for commercial purposes (*n*). So it was held that timber which had drifted from the place where it was moored in a river was not "wreck" within the Merchant Shipping Act, 1854 (*o*). Where a statute gave protection to agents who, before being indicted for an offence, had "disclosed" the same in an examination in bankruptcy, nine judges out of fourteen held that the word "disclosure" meant a statement for the first time of facts which had not before then been made known, and not merely a confession of an offence which might have been proved already (*p*).

At other times, however, words have received a Even

(*m*) *Ormerod v. Chadwicke*, 16 M. & W. 367.

(*n*) *Law v. Dodd*, 1 Ex. 845.

(*o*) *Palmer v. Rouse*, 3 H. & N. 505; 27 L. J. Ex. 437.

(*p*) *R. v. Skeen*, Bell C. C. 97; 28 L. J. M. C. 91.

though
that mean-
ing is not
strictly
accurate.

meaning which the necessity of giving an effect to the statute has rendered reasonable, but which cannot be called usual or strictly accurate. Thus, in earlier times, *secundum quantitatem terræ* in the Act *Quia emptores*, 18 Ed. I., was rendered "according to the value" (*q*); *son fait demesne* was turned into *son tort demesne* (*r*), and *perdra la chose* was treated as equivalent to *amittet locum* (*s*). In more modern cases a wall has been held to be a "sewer" (*t*); a ditch a "fence" (*u*); the word "land" has been construed to include a fishery (*x*); a bench outside a house has been regarded as "on the premises" (*y*); Southampton Water has been described as a public thoroughfare (*z*); "rent" has been taken to mean annual value (*a*); races held in a field, which was private property, have been considered public races (*b*), and private premises, on which there was a sale by auction, a place of public resort (*c*). Again, the conjunction "and" has been considered equivalent to "or" (*d*), while "or" has been read as if it were "and" (*e*). Where, indeed, it was suggested that an effectual meaning

(*q*) 2 Inst. 503, 504.

(*r*) 2 Inst. 289.

(*s*) 2 Inst. 303.

(*t*) *Poplar Board of Works v. Knight*, E. B. & E. 408.

(*u*) *Ellis v. Arnison*, 1 B. & C. 70.

(*x*) *Oldaker v. Hunt*, 19 Beav. 485; 6 De G. M. & G. 376.

(*y*) *Cross v. Watts*, 13 C. B. N. S. 239; 32 L. J. M. C. 73.

(*z*) *Coulbert v. Troke*, L. R. 1 Q. B. D. 1.

(*a*) *Sheffield Waterworks Co. v. Bennett*, L. R. 7 Ex. 409; 8 Ex. 196.

(*b*) *Boughey v. Rowbotham*, 4 H. & C. 711.

(*c*) *Sewell v. Taylor*, 7 C. B. N. S. 160; 29 L. J. M. C. 50.

(*d*) *Townsend v. Read*, 10 C. B. N. S. 308; *Waterhouse v. Keen*, 4 B. & C. 200. See also *Creswick v. Rookshy*, 2 Bulstr. at p. 51.

(*e*) *Fowler v. Padgett*, 7 T. R. 509.

could be given to words which were useless as they stood, by substituting "and" for "or" and "levied" for "issued," the Court declined to make any such alteration (*f*). But there is a manifest distinction between the act of giving a somewhat strained and artificial sense to a word, and that of absolutely replacing one word by another.

It has often been laid down, that while words are to be understood in their plain and ordinary sense, they must not be read so literally as to defeat the object of an enactment (*g*). Acting on this principle, the Courts have, both in ancient and modern times, given some words a wider meaning than they usually bear, and have restricted or modified the meaning of others. This is especially to be noticed where an Act deals with words of classification. In many cases it has been held that the phrase, "person or persons," included corporations (*h*); but that principle has not been extended so far as to render a corporation liable to proceedings under the Pharmacy Act, 1868, which imposed a penalty on any person not being a duly registered pharmaceutical chemist, who kept open a shop for the sale of poisons (*i*), or to enable a corporation to sue as a common informer (*k*). So, where an Act

Words
not to be
read too
literally.

Words
read in a
widersense
than they
usually
bear.

(*f*) *Green v. Wood*, 7 Q. B. at p. 185.

(*g*) See *Lyde v. Barnard*, 1 M. & W. at pp. 113, 114, *per* Parke, B.; *Ruther v. Harris*, L. R. 1 Ex. D. at p. 100, *per* Grove, J.

(*h*) 2 Inst. 722; *Bishop of Meath v. Marquis of Winchester*, 3 Bing. N. C. at p. 207; *Corporation of Newcastle v. Att.-Gen.*, 12 Cl. & Fin. 402; *Boyd v. Croydon Rail. Co.*, 4 Bing. N. C. 669; *Cortis v. Kent Waterworks Co.*, 7 B. & C. at p. 330.

(*i*) *Pharmaceutical Society v. London Supply Association*, L. R. 4 Q. B. D. 313, 5 Q. B. D. 310, 5 App. Cas. 857.

(*k*) *St. Leonard's, Shoreditch, v. Franklin*, L. R. 3 C. P. D. 377.

imposed a liability for the repair of certain roads upon "all and every body politic or corporate, and person or persons," it was held that parishes were liable (*l*). So, too, the "progenitors" of a king were held to be his predecessors (*m*). Some conflicting decisions are to be found as to the meaning of the word "cattle" in different Acts of Parliament. At one time it was held that an Act, speaking of "sheep or other cattle," could not be extended to any but sheep (*n*), but at another time "cattle" were held to include horses (*o*).

Words denoting time are not always literally construed. Thus the words "forthwith" and "immediately," though in strictness they imply "prompt vigorous action without any delay" (*p*), have generally been considered to mean within a reasonable time (*q*). It has been held sufficient if a judge's certificate for a special jury, or that an action had been brought to try a right, or that a trespass was wilful and malicious, was granted within a reasonable time (*r*), such as a quarter of an hour after the verdict was given (*s*), or, in the course of the day on which the trial took place (*t*),

(*l*) *R. v. Barton, Inhabitants*, 11 A. & E. 343.

(*m*) *Bishop of Meath v. Marquis of Winchester*, 3 Bing. N. C. at p. 205; 4 Cl. & Fin. at p. 545.

(*n*) *Fletcher v. Lord Sondes*, 3 Bing. at pp. 580, 581, *per* Best, C.J.

(*o*) *R. v. Paty*, 2 W. Bl. 721; *Wright v. Pearson*, L. R. 4 Q. B. 582.

(*p*) *R. v. Berkshire Justices*, L. R. 4 Q. B. D. 469.

(*q*) *Butler and Baker's Case*, 3 Rep. 28b.; *Tennant v. Bell*, 9 Q. B. 684.

(*r*) *Christie v. Richardson*, 10 M. & W. 688.

(*s*) *Thompson v. Gibson*, 8 M. & W. 281.

(*t*) *Page v. Pearce*, 8 M. & W. 677.

or on the following morning (*u*). Ten days, however, form too long an interval (*x*), and it need not, therefore, be said that a year is far too long (*y*). Where an appellant was required to enter immediately into recognisances to prosecute an appeal, it was held sufficient in one case if he did so within a week (*z*) ; in a later case, it was decided that four days formed too long an interval (*a*). Without attempting to reconcile the two last cases, we may add that a certificate given by justices of the dismissal of a complaint, which is required by statute to be given forthwith, is not in compliance with the Act if two months elapse before it is given (*b*).

Where an Act gives an appeal to the next sessions, this is taken to mean the next practicable sessions—the next at which the appeal can be heard (*c*) ; and the Court before which an indictment is “preferred” means the Court before which it is tried (*d*). A penalty imposed on a person “using an engine or instrument of destruction for the purpose of killing game on a Sunday,” is incurred by any one who sets a snare on Friday or Saturday, and leaves it set until the following Monday (*e*). An Act forbidding persons to fish for salmon between

(*u*) *Nelmes v. Hedges*, 2 Dowl. N. S. 350.

(*x*) *Forsdike v. Stone*, L. R. 3 C. P. 607.

(*y*) *Grace v. Clinch*, 4 Q. B. 606.

(*z*) *Re Blues*, 5 E. & B. 291.

(*a*) *R. v. Berkshire Justices*, L. R. 4 Q. B. D. 469.

(*b*) *R. v. Robinson*, 12 A. & E. 672.

(*c*) *R. v. East Riding of Yorkshire Justices*, 1 Dougl. 192 ; *R. v. Essex Justices*, 1 B. & Ald. 210.

(*d*) *R. v. Pembroke Inhabitants*, 3 Q. B. 901 ; *R. v. Upper Papworth*, 2 East, 413.

(*e*) *Allen v. Thompson*, L. R. 5 Q. B. 336.

noon on Saturday and six o'clock on Monday morning, under pain of forfeiting all fish taken between those hours, and "any net used in taking the same," applies to the case of any person who fishes for salmon, though he may be unsuccessful, and a net used for the purpose of taking salmon is liable to forfeiture, though no fish are actually taken (*f*). Where a duty was imposed on "paper," it was held to extend to an article which could be used as paper, though it was made from animal fibres, and resembled parchment rather than paper, which is usually made from vegetable fibres (*g*).

Words
read in a
narrower
sense than
they
usually
bear.

If in these cases the meaning of words was somewhat enlarged, there are others in which it has been restricted. Thus an Act which imposed a penalty on persons piloting any vessel down the Thames without being authorised by the Trinity House, was held only to apply when vessels were piloted down the Thames for the purpose of a regular voyage, not when they were moved from one wharf to another for the purpose of discharging cargo (*h*). An Act (46 Geo. III. c. 43) provided that "every person who shall appraise any estate, real or personal, in expectation of any hire or reward, shall be deemed to be an appraiser." It was held that this Act did not include a person who made one single valuation, but referred only to such as bore the known character of appraisers (*i*). The Statute of Marlebridge (cap. 4) enacted that none should carry a

(*f*) *Ruther v. Harris*, L. R. 1 Ex. D. 97.

(*g*) *Att.-Gen. v. Barry*, 4 H. & N. 470.

(*h*) *R. v. Lambe*, 5 T. R. 76.

(*i*) *Atkinson v. Fell*, 5 M. & S. 240.

distress from one county into another. This did not extend to the case of a tenant who held land of a manor lying in another county, for there the lord might drive a distress from the land holden of the manor into the county where the manor itself lay (*k*). So, too, words are not to be taken literally when the effect of such construction would be to defeat natural justice, as by making a man a judge in his own cause, or by depriving him of a trial. Thus Magna Charta (c. 12), which provides that assizes of novel disseisin and of *mort d'ancestor* shall not be held except in their proper counties, has been qualified where a literal construction of the words would make the Lord Marcher in Wales a judge in his own cause (*l*). So the Statute of Merton (20 Hen. III. c. 3), which provided that an inquisition should be taken by the first jurors, was held not to apply where there were no jurors, for if the words had then been literally construed the inquisition could not be taken at all (*m*). Again, if an indictment for not repairing a county bridge could not be renewed by *certiorari*, the result would be that the indictment must have been tried by the inhabitants of the county who were the persons interested (*n*).

As the literal meaning of words, and even their usual meaning, can thus be forsaken, it follows as a necessary consequence that the same word may have various meanings not only in different Acts

Various meanings given to words.

(*k*) 2 Inst. 106; *Reniger v. Fogassa*, Plowd. at p. 18.

(*l*) 2 Inst. 25.

(*m*) 2 Inst. 84.

(*n*) *R. v. Cumberland Inhabitants*, 6 T. R. 154.

In the
same Act.

of Parliament but sometimes in the same Act or in the same section. As a general rule the Courts endeavour "to give the same meaning to the same words occurring in different parts of an Act of Parliament" (*o*), and it is said that "if the Legislature have used an ambiguous word in a definite sense in one passage of a clause in an Act of Parliament, it is in accordance with the rules of sound construction and legitimate inference to hold that the same word is used in the same sense when found in another passage of the same clause" (*p*). This, however, is not always possible. In one case the Court, in construing the 9th section of 3 & 4 Wm. IV. c. 27, found that the word "rent" occurred seven times in that section, and that in three of those instances it must be read in the sense of "rent-charge," in the other four instances in the sense of "rent reserved" (*q*). So where bigamy was defined in the words "if any person being married shall marry another person," it was held that the word "married" implied a perfect and binding marriage, but the word "marry" had no such meaning (*r*).

It has been said that words used in a consolidation Act may have a different meaning from that of the same words when used in any of the Acts comprehended (*s*). But this applies with even greater force when the same word is used in two Acts differing in subject matter. "The meaning

(*o*) *Courtauld v. Legh*, L. R. 4 Ex. at p. 130, *per* Cleasby, B.

(*p*) *Lord Fermoy's Claim to Vote*, 5 H. L. C. at p. 745, *per* Crowder, J.

(*q*) *Doe d. Angell v. Angell*, 9 Q. B. 328, 356.

(*r*) *R. v. Allen*, L. R. 1 C. C. R. 367, 371.

(*s*) *R. v. Justices of Kent*, 2 Q. B. at p. 692, *per* Coleridge, J.

of the words of an Act of Parliament is to be ascertained," says Best, C.J., "from the subject to which it refers, so that the same words receive a very different construction in different statutes" (t). "When it is clear from the context of an instrument in what sense words are used in that instrument, the sound rule of construction is to attribute to them that meaning, even though the words are technical and have technically a different meaning" (u). The meaning of particular words in statutes "is to be found not so much in strict etymological propriety of language, or even in popular use, as in the subject or occasion on which they are used and the object that is intended to be attained" (x). The meaning of words varies according to the circumstances with respect to which they are used (y), and it is said that "the same words might mean a very different thing when put in to impose a tax, from what they would mean when exempting from a tax" (z). It is therefore impossible to argue that a word to which a definite meaning has been attached by the Legislature, or which has received a judicial construction, when used in one Act, is to bear the same sense in another. There are several decisions to the effect that cases upon any one class of statutes are inapplicable to an entirely different class. When the

Words to
be read
according
to subject-
matter.

(t) *East India Interest*, 3 Bing. at p. 196.

(u) *Graham v. Ewart*, 1 H. & N. at p. 563, *per* Coleridge, J.

(x) *R. v. Hall*, 1 B. & C. at p. 136.

(y) *Wear Commissioners v. Adamson*, L. R. 2 App. Cas. at p. 763, *per* Lord Blackburn.

(z) *Rein v. Lane*, L. R. 2 Q. B. at p. 151; 8 B. & S. at p. 90, *per* Blackburn, J.

Court has to construe the words used in the Registration Acts it can derive little help from cases bearing on settlements, or on the Tenement Acts (*a*), or on indictments for burglary (*b*). Nor do the cases decided on the Registration Acts throw any light on the construction of statutes which fix the term of residence or occupation necessary for voting in the University of Oxford (*c*), or for acquiring a settlement (*d*). On the same ground it has been decided that the meaning of the word "shop" in other statutes is not of much use when the Fairs and Markets Act has to be construed (*e*), and that cases about wills are not applicable to the construction of statutes (*f*).

Looking at the instances in which different meanings have been given to the same word, we find that an articled clerk is not an apprentice within the Bankruptcy Act, 6 Geo. IV. c. 16 (*g*), but is an apprentice within the Settlement Act, 3 & 4 Wm. & Mary, c. 11 (*h*). A bastard child is not within Lord Campbell's Act, so as to be entitled to damages upon the death of a parent (*i*), but is within the Marriage Act, 26 Geo. II. c. 33, which requires the consent of the father, guardian, or

(*a*) *Dewhurst v. Fielden*, 7 M. & G. 187; 8 Scott, N. C. 1073.

(*b*) *Jolliffe v. Rice*, 6 C. B. at p. 10. See *Cook v. Humber*, 11 C. B. N. S. at p. 48.

(*c*) *R. v. Vice-Chancellor of Oxford*, L. R. 7 Q. B. 471.

(*d*) *R. v. St. Nicholas, Rochester, Inhabitants*, 5 B. & Ad. at p. 226, *per* Lord Denman, C.J.

(*e*) *Piper v. Whalley*, 6 B. & S. 303.

(*f*) *Doe d. Myatt v. St. Helen's Rail. Co.*, 2 Q. B. at p. 369.

(*g*) *Ex parte Prideaux*, 3 Myl. & Cr. 327.

(*h*) *St. Pancras v. Clapham*, 2 E. & E. 742.

(*i*) *Dickinson v. N. E. Rail. Co.*, 2 H. & C. 735; 33 L. J. Ex. 91.

mother to the marriage of persons under age (*k*). Statutes which authorise or require an Act to be done "upon" the occurrence of some event, furnish similar instances. "Upon," it has been said, "may undoubtedly mean *before* the act done to which it relates, or *simultaneously with* the act done, or *after* the act done, according as reason and good sense require the interpretation with reference to the context and the subject matter of the enactment" (*l*). Therefore where the Divorce Act gave the Court power to make an order for the permanent maintenance of a wife "on" any decree for dissolution of marriage, it was held that the Court had this power after decree, and need not exercise it only at the time when the decree was pronounced (*m*). Where an order to stop up paths might be made "on notice given," it was held that this meant after notice had been given (*n*). On the other hand where "upon the trial of any issue" leave to move might be given, it was held that this meant at the trial, and that leave could not be given three days afterwards (*o*).

Another instance is supplied by certain Acts which make the production of some document "sufficient" evidence of the validity of a will, the nonpayment of money, the subscription of capital.

(*k*) *R. v. Hodnett, Inhabitants*, 1 T. R. 96.

(*l*) *R. v. Humphery*, 10 A. & E. at p. 370.

(*m*) *Bradley v. Bradley*, L. R. 3 P. D. 47.

(*n*) *R. v. Arkwright*, 12 Q. B. 960.

(*o*) *Folkard v. Met. Rail. Co.*, L. R. 8 C. P. 470. See, too, *Pierpoint v. Cartwright*, L. R. 5 C. P. D. 139, where it was held that "at the trial or hearing" does not mean within an hour and a half after judgment.

It was held in two cases that the word "sufficient" meant *prima facie* evidence as opposed to conclusive, and that such evidence might therefore be rebutted (*p*). In another case, however, it was held that sufficient meant much more than this, and that such evidence was either conclusive in the absence of fraud, or could only be rebutted by very clear testimony (*q*).

Even where there is no such variety of meaning, the rule which requires words to be understood according to the subject-matter of the statute must not be forgotten. Very great absurdity might be caused by giving words in one statute a sense which they would naturally and properly bear in another. Where the County Courts Act, 9 & 10 Vict. c. 95, authorised the removal of a clerk for "inability or misbehaviour," and a clerk was removed for inability, which proved to be inability to pay his debts, it was held that his removal was not authorised by the statute (*r*). Where the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), imposed a duty in the case of a person "competent to dispose by will of a continuing interest," it was decided that the liability to this duty did not depend on mental capacity (*s*). The word "residence" in the Bills of Sale Act was construed with reference to the subject-matter of the Act, and the intention of the Legislature, which

(*p*) *Barraclough v. Greenhough*, L. R. 2 Q. B. 1, 612; 7 B. & S. 170; 8 B. & S. 623; *R. v. Fordham*, L. R. 8 Q. B. 501.

(*q*) *Ystaferra Iron Co. v. Neath and Brecon Rail. Co.*, L. R. 17 Eq. 142, *per* Jessel, M.R.

(*r*) *R. v. Owen*, 15 Q. B. 476.

(*s*) *Att.-Gen. v. Hallett*, 2 H. & N. at p. 374.

was that the person making a bill of sale should be found without difficulty (*t*). And in another Act the words "nature of the interest in lands," which *primâ facie* would mean only the quality of the interest, were held to include the quantity as well (*u*).

The meaning of words is sometimes rendered uncertain by a change in the circumstances which existed at the time when an Act was passed. There may be a question whether words are to change their meaning from time to time, or are to retain a sense which may cease to be effectual. Where an Act spoke of "bread usually sold as French or fancy bread," it was held by two judges that this phrase did not mean bread usually sold as such when the Act passed (*x*). From this opinion, however, Hannen, J., dissented, and the view which he took was afterwards approved by Blackburn and Archibald, JJ. (*y*). In another case it has been held that where the "town of Rochdale" was mentioned in an Act, that phrase was not confined to the town which existed when the Act was passed, but included streets subsequently added (*z*).

Is the meaning of words affected by a change of circumstances?

The general rule which has now been considered is subject to one important exception. If the intention of the Legislature cannot be ascertained from the Act itself, we may properly have recourse to other methods of effecting that purpose. But there are very few legitimate guides to the interpretation of Acts of Parliament beyond the Acts

Exception to the general rule of construction.

(*t*) *Blackwell v. England*, 8 E. & B. 541.

(*u*) *Healey v. Thames Valley Rail. Co.*, 5 B. & S. 769.

(*x*) *R. v. Wood*, L. R. 4 Q. B. 559.

(*y*) *Aerated Bread Co. v. Gregg*, L. R. 8 Q. B. 355.

(*z*) *Collier v. Worth*, L. R. 1 Ex. D. 464.

themselves, and those which are legitimate must be followed with extreme caution.

Where
language
is doubtful.

Where the language of an Act is doubtful in its meaning, and cannot be made plain by the help of any other part of the same statute, or of any Act in *pari materia* which may be read with it, or of the course of the Common Law up to the time of its passing, the Court may consider what was the construction put upon the Act when it first came into operation. The maxim which is

Look to
*contem-
poranea
expositio.*

so often quoted, "*Contemporanea expositio est fortissima in lege* (a), fully bears out this proposition. "In construing old statutes," says Martin, B., "it has been usual to pay great regard to the construction put upon them by the judges who lived at or soon after the time when they were made, because they were best able to judge of the intention of the makers at the time" (b). So, too, it is said by Burke, C.J., delivering the considered judgment of the Exchequer Chamber of Ireland, that in expounding an ancient statute without the assistance of any decided cases on the subject, the Court should attend to the *contemporanea expositio* "to be discovered from what appears to have been done, or not done, upon the statute, and how it appears to have been understood and dealt with shortly after the Act had passed by the members of the legal profession who lived at or near the time" (c).

(a) 2 Inst. 11, 136; 1 Kent's Com. 465, quoted by Crowder, J. *Lord Fermoy's Claim to Vote*, 5 H. L. C. at p. 747.

(b) *Morgan v. Crawshaw*, L. R. 5 H. L. at p. 315.

(c) *Att.-Gen. v. The Primate*, 1 Jebb. & Symes, at p. 317. See

The best evidence to show what was the construction adopted at the time when an Act was passed must necessarily be found in the decisions of the Courts, or in the works of writers of authority. But a very strong inference may also be drawn from long uninterrupted usage, which is presumed to have commenced with the passing of the Act in the absence of proof to the contrary. This position is maintained by Lord Brougham against the Lord Justice Clerk: "I cannot go along with his Lordship when for this reason he denies that usage, however long and inveterate, could be binding and operative on the parties. It can be binding and operative on the parties only as it is the interpreter of a doubtful law as affording a contemporary interpretation; but it is quite plain that as against a plain statutory law no usage is of any avail. But this undeniable proposition supposes the statute to speak a language plainly and indubitably differing from the purport of the usage. Where the statute speaking on some points is silent as to others, usage may well supply the defect, especially if it is not inconsistent with the statutory directions, where any are given; or where the statute uses a language of doubtful import, the acting under it for a long course of years may well give an interpretation to that obscure meaning, and reduce that uncertainty to a fixed rule: *optimus legis interpret consuetudo*, which is sometimes termed *contemporanea expositio*; and where you can carry back the usage for a century,

Evidenced
by un-
broken
usage.

also *M'William v. Adams*, 1 Macq. Scotch Appeals, at pp. 137, 145, *per* Lord Truro.

and have no proof of a contrary usage before that time, you fairly reach the period of *contemporanea expositio* " (d). An unbroken usage of 500 years (e), of 300 years (f), of 200 years (g), even of fifty (h) and thirty years (i), has been held sufficient to establish a certain construction, and to restrain the Courts of later days from giving the words of statutes a meaning which might in itself be more appropriate than the one that had been adopted. "Where the penning of a statute is dubious," says Vaughan, C.J., "long usage is a just medium to expound it by; for *jus et norma loquendi* is governed by usage (k), and the meaning of things spoken or written must be as it hath constantly been received to be by common acceptation" (l).

In other cases it has been observed that a departure from long usage would shake every legal principle and reduce the law to a state of uncertainty. "We really are called upon," says Tindal, C.J., "after a construction has been put upon this Act of Parliament from the very period when it was passed in the 33rd of Edward I. down to the present time, to put a construction different from that which prevailed at the time when the

(d) *Magistrates of Dunbar v. Duchess of Roxburghe*, 3 Cl. & Fin. at p. 354.

(e) *Mansell v. The Queen*, 8 E. & B. at p. 111.

(f) *Gorham v. Bishop of Exeter*, 15 Q. B. 69, 73, 74.

(g) *Garland v. Carlisle*, 2 Cr. & M. at p. 39, *per* Gurney, B.; *Morgan v. Crawshay*, L. R. 5 H. L. at p. 315, *per* Martin, B.

(h) *Lord Fermoy's Claim to Vote*, 5 H. L. C. at p. 785, *per* Pollock, C.B.

(i) *U. S. v. Ship Recorder*, 1 Blatchf. Circuit Court Rep. 218, 223.

(k) Horace, *Ars Poetica*.

(l) *Sheppard v. Gosnold*, Vaughan, at p. 169.

statute was enacted, and different from that which all our predecessors have put. Where would be the certainty of the law of England? What safety would there be for prisoners as well as for the public execution of justice, if judges, acting according to their own discretion, neglecting those rules of interpretation which wise men before them have laid down and which have been sanctioned by time, were to do that for the first time which we are now called upon to do, namely, to put a construction different from that which has been put by all who have gone before them?" (*m*). "Were the language of statute 25 Hen. VIII. c. 19, obscure instead of clear," says Lord Campbell, C.J., delivering the considered judgment of the Court of Queen's Bench, "we should not be justified in differing from the construction put upon it by contemporaneous and long continued usage. There would be no safety for property or liberty if it could be successfully contended that all lawyers and statesmen have been mistaken for centuries as to the true meaning of an old Act of Parliament" (*n*). These principles were applied in the case just cited to the question whether an appeal lay from the Court of Arches to the Judicial Committee or to the Upper House of Convocation (*o*). They have also been applied to the practice of challenging jurors (*p*), to the rating of

(*m*) *R. v. Frost*, Gurney's Rep. at p. 49; reported, but not so fully, 9 C. & P. 129.

(*n*) *Gorham v. Bishop of Exeter*, 15 Q. B. at pp. 73, 74.

(*o*) *Gorham v. Bishop of Exeter*, 15 Q. B. 52; *Ex parte Bishop of Exeter*, 10 C. B. 102; *Re Gorham v. Bishop of Exeter*, 5 Ex. 630.

(*p*) *R. v. Frost*, Gurney's Rep. 9 C. & P. 129; *Mansell v. The Queen*, 8 E. & B. 54.

mines (*q*), to the creation of Irish peerages (*r*), to the amerciamment of earls and barons (*s*). In the United States, where an Act had prohibited the importation of foreign goods except in American ships, or in foreign ships "belonging to the citizens of the country," of which the goods were the product, and for thirty years the word country had been taken to include colonies, it was held that the construction of the Act was no longer an open question, and that the settled practice must prevail (*t*).

Usage
must be
uniform
and
general.

The usage to which we may have recourse must be uniform and unvarying, and can be called in only for the purpose of explaining language which is obscure or equivocal (*u*). If the words of a statute are plain they must be construed without regard to the length of time during which they have been before the world (*x*). "The rule amounts to no more than this, that if the Act be susceptible of the interpretation which has been put upon it by long usage, the Courts will not disturb that construction" (*y*). In an earlier case Lord Tenterden had said that a rule of construction which had been established for a long time ought to be followed, unless it was manifestly wrong and pro-

(*q*) *Morgan v. Crawshay*, L. R. 5 H. L. 304.

(*r*) *Lord Fermoy's Claim to Vote*, 5 H. L. C. 716.

(*s*) 2 Inst. 28.

(*t*) *U. S. v. Ship Recorder*, 1 Blatchf. Circuit Court Rep. 218.

(*u*) *Nagle v. Ahern*, 3 Ir. Law Rep. 41; *R. v. Hogg*, 1 T. R. at p. 728, *per* Grose, J.

(*x*) *Gwyn v. Hardwicke*, 1 H. & N. at p. 53, *per* Pollock, C.B.

(*y*) *Pochin v. Duncombe*, 1 H. & N. at pp. 856, 857, *per* Pollock, C.B.

ductive of inconvenience (z). . And the words of Vaughan, C.J., are to the same effect : "If usage hath been against the obvious meaning of an Act of Parliament by the vulgar and common acceptation of the words, then it is rather an oppression of those concerned than an exposition of the Act" (a). Besides being uniform and unvarying, usage must be general (b), unless, indeed, the Act which is sought to be explained is itself a special Act relating to one particular place or business (c).

Similar in effect to an unbroken usage is a long current of judicial decisions. When doubtful words have received the same interpretation in a succession of cases, and the Legislature, which is presumed to know of such decisions, has not expressed its dissent by a declaration of the law or other positive enactment, the Courts will consider themselves bound to adopt that meaning. "When solemn determinations acquiesced under have settled precise cases and become a rule of property, they ought, for the sake of certainty, to be observed as if they had originally made a part of the text of the statute" (d). It is said that even without any express decision the uniform course and practice of the Courts is sufficient to lay down a rule of construction (e), and this may be supported by the words of Lord Coke : "*It is benedicta expositio*

Evidenced
by judicial
decisions.

(z) *R. v. Sedgley*, 2 B. & Ad. at p. 73.

(a) *Sheppard v. Gosnold*, Vaughan, at p. 170.

(b) *R. v. Hogg*, 1 T. R. at p. 728.

(c) *Love v. Hinckley*, 1 Abbott Adm. Rep. 436.

(d) *Windham v. Chetwynd*, 1 Burr. at p. 419, *per* Lord Mansfield, C.J.

(e) *Wilton v. Chambers*, 7 A. & E. at p. 532.

when our ancient authors and our year-books, together with constant experience, do agree" (*f*). If, indeed, the decisions are conflicting, and if the reasons given for conflicting judgments are equally unsatisfactory, the Court must look to the words of the statute and interpret them by its own unfettered judgment (*g*). But where the authorities are consistent, the Court is bound by them, even if it does not approve the principles on which they have acted (*h*). When once a judicial interpretation has been put upon a clause which is expressed in a vague manner by the Legislature and is difficult to understand, "that ought of itself to be a sufficient authority for adopting the same construction" (*i*). In the construction of a new statute the Court ought not to disregard a decision pronounced after due deliberation by a Court of co-ordinate jurisdiction, unless there has been a palpable misconstruction (*k*). The same enactment, moreover, "may receive one construction when it deals for the first time with a given subject-matter, and have another meaning and construction when it deals with a matter that has already been made the subject of enactment or direction" (*l*).

The tendency of the Courts to adopt a construction already placed on the words of an Act of

(*f*) 2 Inst. 181.

(*g*) *R. v. Leek Wootton*, 16 East, at p. 122, *per* Lord Ellenborough, C.J.; *Newton v. Cowie*, 4 Bing. at p. 241, *per* Best, C.J.

(*h*) *Newton v. Cowie*, 4 Bing. at p. 241.

(*i*) *Williams v. Newton*, 14 M. & W. at p. 757, *per* Rolfe, B.

(*k*) *Daly v. Lord Bloomfield*, 5 Ir. Law Rep. at p. 77.

(*l*) *Escott v. Mastin*, 4 Moo. P. C. at p. 123.

Parliament appears in the following instance. Where proceedings were taken under 29 Car. II. c. 7, against a baker for baking dinners on a Sunday, the Court attached the greatest weight to a decision given thirty-four years before to the effect that this was not an offence against the statute (*m*). “We find one solemn determination on these doubtful expressions in the statute,” said Buller, J., in the course of his judgment (*n*), “and as that construction has since prevailed, there is no reason why we should now put another construction on the Act on account of any supposed change of convenience.” Sometimes, indeed, it has been suggested that a current of judicial decisions can override the plain meaning or grammatical construction of statutes. It is said by Parke, B., that the grammatical meaning of words must be adopted, “unless an uniform series of decisions has already established a particular construction” (*o*). It is also said by Bayley, J.: “We are bound to construe every statute according to the plain and ordinary import of its words, and to act upon that construction, unless we should find ourselves bound by an uniform course of well considered decisions giving different effect to the provisions of the statute” (*p*). Lord Cottenham uses language which is still stronger: “It cannot be denied that in some cases the plain meaning of an Act of Parliament has been changed by a course of judicial

(*m*) *R. v. Younger*, 5 T. R. 449.

(*n*) *Ib.* at p. 450.

(*o*) *Doe d. Ellis v. Owens*, 10 M. & W. at p. 521.

(*p*) *R. v. Great Driffield, Inhabitants*, 8 B. & C. at p. 690.

decisions, each going a little and a little further, so that at length the Courts have adopted a construction widely different from that which would, but for such interpretations, have been put upon the plain intent of the words. In all such cases you are to take into consideration not merely the words of the Act of Parliament, but the decisions on them which may be said to have been all but imported into the words of the Act, so that the Act is to be construed with reference to such decisions. But I am not aware of any case in which a single decision, even of a Court of competent jurisdiction having before it properly and judicially the matter on which it was pronouncing a judicial decision, has been held to operate so upon the plain meaning of a statute. There has been a course of decisions, and where the decision first made has been adhered to and confirmed by other decisions, that is what is called a current of authorities too strong to be resisted" (q). If these passages are to be taken literally, it follows that the judges would have full power to repeal or alter the clearest language used by the Legislature, so long as they proceeded gradually. The theory of judicial supremacy, which has been abandoned by the soundest and most learned judges, would be once more in full vigour, but that supremacy must be cautiously exercised, and the suspicions of Parliament must not be awakened until the work is done and the desired construction firmly established. It is safer, however, to treat these expressions as somewhat

(q) *Earl of Waterford's Claim*, 6 Cl. & Fin. at pp. 172, 173.

too wide, and to confine them to cases where the language of statutes is ambiguous.

One further principle remains to be stated as a guide to the construction of doubtful and ambiguous statutes. Although when the law is clearly expressed the Courts cannot consider the consequences to which it may lead, yet if the intention of the Legislature cannot be ascertained from the Act itself, the judges may enter into questions of public convenience and expediency. “Where the law is doubtful and not clear the judges ought to interpret the law to be as is most consonant to equity and least inconvenient” (r). Where complicated statutes are doubtful, expediency may be regarded in their construction (s); and if a construction is doubtful its inconvenience may lead to its being rejected (t). “It is only in statutes of doubtful meaning that Courts are authorised to indulge conjectures as to the intention of the Legislature, or to look to consequences in the construction of a law” (u); but where a construction would lead to such consequences as the Legislature could not possibly have intended (x), where the effect of such a construction would be to infringe rights, to overthrow fundamental principles, to depart from the general system of laws, “the legislative intention must be expressed with irresistible clearness to induce a Court of justice to suppose a

Convenience or expediency.

(r) *Dixon v. Harrison*, Vaughan, at p. 38.

(s) *R. v. Lancaster*, 10 Q. B. at p. 970.

(t) *Ayrton v. Abbott*, 14 Q. B. at p. 16, per Patteson, J.

(u) *Ogden v. Strong*, 2 Paine, at p. 587.

(x) *R. v. Great Driffield, Inh.*, 8 B. & C. at p. 690, per Bayley, J.

design to effect such objects" (*y*). Similar language has been used by the Courts when they have been asked to consider the hardship which would result from a particular construction of a statute. Such an argument, they have said, could not be fairly urged unless the language of the statute was doubtful; but if it was doubtful the prospect of hardship would make the Court more than usually cautious in forming its judgment (*z*), and in endeavouring to ascertain the real intention of the Legislature (*a*). "We have nothing to do with such considerations as those of hardship, except this—that no doubt when a case of hardship is pointed out in a statute it makes the construction which leads to it more improbable than if it led to a reasonable and just condition of things" (*b*). Considerations of policy and convenience may indeed help the construction of words which are ambiguous (*c*), and may afford fair ground for supposing that the Legislature cannot have contemplated a certain construction, unless any other would do violence to the language of the statute (*d*).

In considering an Act which provided that justices of the peace might suspend an order for the removal of a poor person in case he was brought before any justice or justices for the purpose of being removed and was too ill to travel, Lord

(*y*) *U. S. v. Fisher*, 2 Cranch Sup. Court, at pp. 389, 390.

(*z*) *Hall v. Franklin*, 3 M. & W. at p. 275, *per* Lord Abinger, C.B.

(*a*) *Moss v. London Commissioners of Sewers*, 4 E. & B. at p. 679.

(*b*) *Rusby v. Newson*, L. R. 10 Ex. at p. 329, *per* Bramwell, B.

(*c*) *Betty v. Nail*, 6 Ir. C. L. R. 26.

(*d*) *Doe d. Governors of Bristol Hospital v. Norton*, 11 M. & W. at p. 928, *per* Parke, B.

Ellenborough, C.J., held that it was not necessary for the pauper to be brought bodily before the justices, but that the Act was satisfied if the question of his removal was brought before them. "I hope," he added, "that the apparent justice of the one construction, and the great and manifest inconvenience of the other, do not too much warp my mind in coming to the conclusion which I have done; for it would indeed be a grievous construction if we were bound to adopt the literal sense of the words of the statute" (*e*). In other cases where the words used by the Legislature have been capable of two constructions, one of which would be absurd or mischievous (*f*), or would cause some hardship (*g*), or some manifest injustice which must have been present to the minds of those who passed the Act (*h*), or would have the effect of destroying property (*i*), or of defeating a contract or moral obligation (*k*), while the other construction would be free from any such objection, the Courts have adopted the construction which worked the least hardship (*l*), or was most consonant with justice, with the rights of private persons, and with public convenience (*m*).

(*e*) *R. v. Everdon, Inhabitants*, 9 East, 101, 105.

(*f*) *R. v. Skeen*, Bell's C. C. at p. 116.

(*g*) *Re Toby*, 12 Q. B. 694.

(*h*) *R. v. Monck*, L. R. 2 Q. B. D. at p. 555, *per* Brett, J.A.

(*i*) *Vestry of Chelsea v. King*, 17 C. B. N. S. at p. 629, *per* Erle, C.J.

(*k*) *R. v. Taunton St. James, Inhabitants*, 9 B. & C. at p. 837, *per* Littledale, J.

(*l*) *Prew v. Squire*, 10 C. B. at p. 916, *per* Jervis, C.J.

(*m*) *R. v. Land Tax Commissioners*, 2 E. & B. at p. 716, *per* Lord Campbell, C.J.

CHAPTER IV.

THE OPERATION OF STATUTES.

WE have now to consider the operation of statutes, when it commences, how it may be restrained, enlarged or otherwise affected.

Com-
mence-
ment of
operation.

The date of an Act has sometimes been regarded as part of the Act, but it seems more convenient and more logical to look upon the bearing which it may have on the operation of a statute. Unless the Act itself provides a time from which its operation is to begin, the day when it receives the royal assent is the date of its commencement (*a*), and the Act takes effect from the first moment of that day (*b*).

Before, however, "a continuous act or proceeding, not originally unlawful, can be treated as unlawful by reason of the passing of an Act of Parliament by which it is in terms made so, a reasonable time must be allowed for its discontinuance" (*c*).

Until the passing of the 33 Geo. III. c. 13, it was held that every Act dated from the first day of the session in which it was passed (*d*), and this

(*a*) 33 Geo. III. c. 13.

(*b*) *Tomlinson v. Bullock*, L. R. 4 Q. B. D. 230.

(*c*) *Burns v. Nowell*, L. R. 5 Q. B. D. at p. 454.

(*d*) *Punter v. Att.-Gen.*, 6 Bro. P. C. 486.

fiction of law was carried to such an extent that a statute passed at a late period of the session rendered invalid annuities granted four months before (*e*). This decision certainly went beyond the old theory, which was that "as soon as the Parliament hath concluded anything, the law intends that every person hath notice thereof, for the Parliament represents the body of the whole nation" (*f*). It was even more strongly opposed to the principle established by the Code Napoléon, which has received the marked approval of Chancellor Kent, and which is that laws should take effect from the time when the public may reasonably be supposed to know of their existence (*g*).

The modern practice of appointing some particular day as the time from which any statute is to take effect, and allowing a sufficient interval between the time when the royal assent is given and the commencement of the operation of the Act, probably answers every purpose. Where the date is so fixed, the Act does not refer to anything that may be done between the time when it actually passes and the time when it comes into operation (*h*), although when it has once come into operation there may be a relation back to the time of its passing (*i*). Where the day named for the

(*e*) *Latless v. Holmes*, 4 T. R. 660.

(*f*) 4 Inst. 26.

(*g*) 1 Kent, 458.

(*h*) *Paddon v. Bartlett*, 3 A. & E. at p. 896, *per* Lord Abinger, C.B; *Wood v. Riley*, L. R. 3 C. P. 26.

(*i*) *Ings v. L. & S. W. Rail. Co.*, L. R. 4 C. P. 17; *Ex parte Rushleigh*, L. R. 2 Ch. D. 9.

commencement of the Act precedes the day on which it receives the royal assent, a section prospective in its terms does not operate on anything done before the royal assent was given (*k*). But where an Act which received the royal assent on the 16th of July, 1830, imposed certain duties on spirits "from and after the 15th of March, 1830," it was held that spirits warehoused after March 15th, 1830, although taken out of the warehouse before July 16th, were liable to those duties (*l*). Where two Acts are passed on the same day, a recital in one of them that the other has already passed is conclusive evidence of the priority in date of the other (*m*). Where, however, an Act passed on the 11th of August, 1803, referred to "any Act *to be* passed in the present session of Parliament," it was held that these words properly described an Act passed on the 27th of July, 1803, as "the session is a thing of continuity, and, therefore, when the Legislature speaks of any Act *to be* passed in that session they mean any Act that shall be passed from the commencement to the conclusion of the session, embracing both the past and future portions of it" (*n*). It may be added that in the United States statutes operate either from the date of their enactment, if no other time is fixed (*o*), or from the time of their approval by the Presi-

(*k*) *Burn v. Carvalho*, 1 A. & E. 895; 4 N. & M. 893.

(*l*) *Jamieson v. Att.-Gen.*, Alcock & Napier, 375.

(*m*) *R. v. Delahunt*, Arm., Mac. & O'G. 255.

(*n*) *Nares v. Rowles*, 14 East, 510, 518.

(*o*) *Matthews v. Zune*, 7 Wheaton, 164; *Warren Manufacturing Co. v. Etna Insurance Co.*, 2 Paine, 502; *The Ann*, 1 Gallison, 62; but see *The Cotton Planter*, 1 Paine, 23.

dent (*p*), but that an Act imposing duties “from and after the passage of this Act” takes effect from the day on which it was passed (*q*).

As a general rule the operation of statutes is not retrospective. *Nova constitutio futuris formam imponere debet, non præteritis* (*r*). It is confined to matters which arise after the passing of each Act, and does not affect any right or title already existing. There is a general presumption against retrospective legislation (*s*), although that presumption may be rebutted by considerations of the remedial nature of an enactment (*t*). Retrospective laws are of questionable policy, and need express words or necessary implication, but are not necessarily opposed to natural justice (*u*). “Those whose duty it is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation, unless the intention of the Legislature that it should be so construed is expressed in clear, plain, and unambiguous language; because it manifestly shocks our sense of justice that an act legal at the time of doing it should be made unlawful by some

Operation
of statutes
not retro-
spective.

(*p*) *Richardson's Case*, 2 Story, 571; *Ankrin's Case*, 3 M'Lean, 285; *Welmont's Case*, 20 Vermont, 653; *Howes's Case*, 21 Vermont, 619.

(*q*) *U. S. v. Williams*, 1 Paine, 261.

(*r*) 2 Inst. 95, 292.

(*s*) *Urquhart v. Urquhart*, 1 Macq. Sc. Ap. at p. 662, per Lord Cranworth.

(*t*) *The Ironsides*, Lush. 458; 31 L. J. Adm. 129.

(*u*) *Phillips v. Eyre*, L. R. 6 Q. B. at p. 23, per Willes, J. See the principles of retrospective legislation stated by Chancellor Kent, *Dash v. Van Kleeck*, 7 Johnson, 477, 502. It is laid down by Story, J., that in the United States a retrospective interpretation is never adopted without absolute necessity: *Blanchard v. Sprague*, 2 Story, 164, 172.

new enactment" (x). "Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; and it is a good general rule that a law should have no retrospect" (y). "It is a broad principle of construction that unless the Court sees a clear intention in an Act of Parliament to legislate *ex post facto*, and to give to the Act the effect of depriving a man of a right which belonged to him at the time of the passing of the Act, the Court will not give the Act a retrospective operation" (z).

Instances
of statutes
which are
not retro-
spective.

The principles thus stated have been followed in a great variety of cases. Thus it was held that the Mortmain Act did not apply to wills made before its passing (a); that the Acts abolishing special demurrer, allowing error to be brought on a special case, or verdicts to be entered on points reserved at the trial, did not apply to pleadings demurred to (b), special cases agreed upon (c), or points reserved (d), before those Acts came into operation. The Act which gives a settlement to any person who has resided in a parish long enough to be irremovable, does not confer a settlement on a person whose residence was complete already (e). The Judicature Act, 1875, does not affect windings-

(x) *Midland Rail. Co. v. Pye*, 10 C. B. N. S. at p. 191, *per* Erle, C.J.

(y) *Culder v. Bull*, 3 Dall. at p. 391, *per* Chase, J.

(z) *Evans v. Williams*, 2 Drewry & Smale, at p. 329, *per* Kindersley, V.-C.

(a) *Ashburnham v. Bradshaw*, 2 Atk. 36; *Att.-Gen. v. Lloyd*, 3 Atk. 551; *Att.-Gen. v. Andrews*, 1 Ves. Sen. 225.

(b) *Pinhorn v. Souster*, 8 Ex. 138.

(c) *Hughes v. Lumley*, 4 E. & B. 358.

(d) *Vansittart v. Taylor*, 4 E. & B. 910.

(e) *R. v. Ipswich Union*, L. R. 2 Q. B. D. 269.

up which began before the Act was in force (*f*). Acts referring to “societies hereafter to be formed,” giving Courts jurisdiction to try offences committed in certain places, releasing the duties accruing on goods captured by private armed vessels, do not extend to societies formed already (*g*), offences already committed (*h*), or goods already captured (*i*). Acts which make deeds of arrangement binding upon creditors (*k*), which provide for the exclusion of secured creditors from the number of persons assenting to such a deed (*l*), which regulate the mode of calculating the value of annuities (*m*), do not extend to deeds executed or annuities granted before the Acts themselves were passed.

Where a right of action exists before the passing of an Act, it can only be taken away by words which clearly show that a retrospective operation is intended. Thus where, before the passing of Acts which altered the law, a verdict had been recovered for a penalty on the omission to pay stamp duties (*n*), a writ of execution had been delivered to the sheriff (*o*), payment had been made by a co-contractor (*p*), an action had been brought upon a wager (*q*), medical charges had been in-

Vested
rights of
action not
defeated.

- (*f*) *Re Joseph Suche & Co., Limited*, L. R. 1 Ch. D. 48.
- (*g*) *R. v. Somersetshire, Justices*, 4 B. & Ad. 549.
- (*h*) *U. S. v. Sturr*, Hempstead's Circuit Court Rep. 469.
- (*i*) *Prince v. U. S.*, 2 Gallison, 204.
- (*k*) *Waugh v. Middleton*, 8 Ex. 352.
- (*l*) *Ellis v. M'Cormick*, L. R. 4 Q. B. 271.
- (*m*) *Re Cornwallis*, 11 Ex. 580.
- (*n*) *Couch v. Jeffries*, 4 Burr. 2460.
- (*o*) *Williams v. Smith*, 2 H. & N. 443 ; 4 H. & N. 559.
- (*p*) *Jackson v. Woolley*, 8 E. & B. 778.
- (*q*) *Moon v. Durden*, 2 Ex. 22.

curred (*r*), a tenancy at will had been determined (*s*), proceedings had been commenced against a debtor who sought to avail himself of the protection of a deed of arrangement (*t*), it was held that the rights already acquired could not be defeated, unless the Legislature showed, by the use of express words, that the Acts were intended to have a retrospective operation.

Where the Statute of Frauds (29 Car. II. c. 3) provided that after a certain date no action should be brought upon any agreement made in consideration of marriage, unless that agreement was in writing, it was held that an action might be brought after that date upon a verbal promise which had been made before (*u*). "It could not be presumed," said the Court, "that the Act had a retrospect to take away an action to which the plaintiff was then entitled" (*x*). But in a case decided on the analogous statute 9 Geo. IV. c. 14, it was held that, after that Act came into operation, an action could not be brought upon a verbal acknowledgment of a debt given before the Act had passed (*y*). The ground upon which this decision rested was that the Act did not come into operation until almost eight months had elapsed since its passing, so that persons to whom verbal promises had been made before the passing of the Act would have eight months during

(*r*) *Wright v. Greenroyd*, 1 B. & S. 758; 31 L. J. Q. B. 4.

(*s*) *Doe d. Evans v. Page*, 5 Q. B. 767.

(*t*) *Marsh v. Higgins*, 9 C. B. 551.

(*u*) *Gilmore v. Shuter*, T. Jones, 108; 2 Show. 17; 2 Mod. 310; 1 Lev. 227; 1 Vent. 330.

(*x*) See the report in 2 Mod. 310.

(*y*) *Towler v. Chatterton*, 6 Bing. 258.

which they might bring their actions. If, however, a right which has once vested cannot be divested without express words, the grounds assigned for this decision are insufficient, and it is difficult to reconcile the case with all the other authorities.

As a vested right cannot be defeated, so a new right cannot in general be created by retrospective legislation. Where it was provided that an attorney admitted in any one Court should be at liberty to practise in any other, it was held that costs incurred before the passing of the Act were not recoverable (z). The repeal of the Act 9 Anne, c. 14, which rendered void bills of exchange given for gaming considerations, did not assist a *bond fide* holder of such a bill who had commenced his action before the repealing Act was passed (a). "The law as it existed when the action was commenced must decide the rights of the parties in the suit, unless the Legislature express a clear intention to vary the relation of litigant parties to each other" (b). So, too, where before the passing of the Copyright Act, 5 & 6 Vict. c. 45, a plaintiff had been allowed by the Court of Chancery to bring an action for the purpose of establishing his right, and after the Act passed he registered his copyright, it was held that the Legislature could not have intended to give

Nor new
rights
created.

(z) *Newton v. Spencer*, 4 Bing. N. C. 174. On the other hand, the words "any business done by such attorney," in 6 & 7 Vict. c. 73, include business done by him before the passing of that Act, so that a bill of charges for such business is taxable, *Brooks v. Bockett*, 9 Q. B. 847.

(a) *Hitchcock v. Way*, 6 A. & E. 943.

(b) *Hitchcock v. Way*, 6 A. & E. at pp. 951, 952.

one party to a suit, which was already begun, an advantage over his adversary (*c*).

Instances
of statutes
which are
retrospec-
tive.

The principles established by the cases already cited have not always prevailed, and there are some decisions which it is difficult to reconcile with any presumption against retrospective legislation. The Bankruptcy Acts which punished bankrupts in case any of their debts had been contracted by fraud (*d*), and avoided settlements made by persons who could not be proved to have been solvent at the time (*e*), were applied to debts contracted and settlements executed before those Acts were passed. The Act 3 & 4 Wm. IV. c. 42, which enacted that in every action brought by an executor or administrator in right of his testator or intestate, the executor or administrator should be liable to pay costs, was held to apply to an action commenced before the Act was in operation (*f*). The Statute of Limitations, 3 & 4 Wm. IV. c. 27, was held to apply to rights which had accrued long before the Act had passed; so that although the Act gave persons claiming land twenty years for the purpose of asserting their title, that title might be barred in less than twenty years after the passing of the Act (*g*), or even many years before its passing (*h*). The Act 9 & 10 Vict. c. 66, which provided that the time during which any person should receive parish relief was to be excluded in reckoning the time which rendered him irre-

(*c*) *Chappell v. Purday*, 12 M. & W. 303.

(*d*) *Ex parte Staner*, 2 De G. M. & G. 263.

(*e*) *Ex parte Dawson*, L. R. 19 Eq. 433.

(*f*) *Freeman v. Moyes*, 1 A. & E. 338.

(*g*) *Doe d. Jukes v. Sumner*, 14 M. & W. 39.

(*h*) *Doe d. Angell v. Angell*, 9 Q. B. 328.

movable, extended to relief given before the Act passed (*i*). The Act 11 & 12 Vict. c. 43, limiting to six months the time during which a complaint might be made to a justice of the peace, applied in cases where that period had elapsed before the passing of the statute (*k*). The Act 3 & 4 Vict. c. 65, giving the Court of Admiralty jurisdiction to decide all claims for necessities supplied to foreign ships, included claims for necessities supplied before the passing of the Act (*l*).

There are other cases in which statutes have received a construction apparently retrospective, but to which that term is not strictly applicable. It has been observed by Lord Denman, C.J., that a statute is not properly called retrospective, merely because "a part of the requisites for its action is drawn from time antecedent to its passing" (*m*). In the case from which these words are taken it was held that an Act, providing that "no woman residing in any parish with her husband at the time of his death, shall be removed," applied to those who had become widows before the passing of the Act (*n*). On similar grounds it was held that the words in the Mercantile Law Amendment Act (19 & 20 Vict. c. 97), "no person who shall be entitled to any action shall be entitled to any time" beyond a certain period, applied to actions brought after the passing of the Act upon causes of action which

Acts which
are not
properly
called
retrospec-
tive.

(*i*) *R. v. Christchurch, Inhabitants*, 12 Q. B. 149.

(*k*) *R. v. Leeds and Bradford Rail. Co.*, 18 Q. B. 343.

(*l*) *The Alexander Larsen*, 1 W. Rob. 288.

(*m*) *R. v. St. Mary's, Whitechapel, Inhabitants*, 12 Q. B. at p. 127.

(*n*) *R. v. St. Mary's, Whitechapel, Inhabitants*, 12 Q. B. 120.

had accrued before (*o*); and that the words in another section of the same Act, "every person who being surety shall pay," applied to persons who were sureties before the passing of the Act, if the condition of the bond was broken, and the payment was made, subsequently (*p*). The Act 6 Geo. IV. c. 16, enacted that no person entitled to any annuity granted by a bankrupt should sue a collateral surety until he had proved in the bankruptcy. It was held that this referred to annuities granted, and commissions of bankruptcy issued, before the passing of the Act (*q*). The provisions of the same Act as to actions by or against assignees in bankruptcy were applied to assignees appointed under a commission issued before the Act had passed (*r*). The words in a later Bankruptcy Act, protecting all executions *bonâ fide* levied before the date of the fiat, referred to executions levied before the passing of the Act, where the bankruptcy did not take place till the Act was in operation (*s*). So, too, an Act which rendered lawful bequests for the benefit of Roman Catholic schools, applied to bequests made before its passing (*t*), and an Act which disqualified persons convicted of felony from selling spirits by retail applied to prior convictions for felony (*u*).

Retro-
spective

In some instances it has been held that the

(*o*) *Cornill v. Hudson*, 8 E. & B. 429; *Pardo v. Bingham*, L. R. 4 Ch. 735.

(*p*) *Re Cochran's Estate, De Wolf v. Lindsell*, L. R. 5 Eq. 209.

(*q*) *Bell v. Bilton*, 4 Bing. 615.

(*r*) *Doe d. Johnson v. Liversedge*, 11 M. & W. 517.

(*s*) *Edmonds v. Lawley*, 6 M. & W. 285.

(*t*) *Bradshaw v. Tasker*, 2 Mylne & Keen, 221.

(*u*) *R. v. Vine*, L. R. 10 Q. B. 195, diss. Lush, J.

Legislature has distinctly shown its intention of giving a retrospective effect to a statute. Thus, where an Act explains a former statute (*x*) or supplies its omissions (*y*), it is held to be retrospective. The Bristol Waterworks Act, 1846, enabled a company to take the water of a certain river. A later Act provided that nothing in the Act of 1846 should authorise the company to take the water of that river without the written consent of two officers of the Duchy of Cornwall. It was held that the later Act was retrospective (*z*). Again, the use of particular words has been regarded as throwing a clear light upon the intention of the Legislature. A retrospective operation has, on this ground, been given to such phrases as "being married or which hereafter shall marry" (*a*), "payments really and *bond fide* made or which hereafter shall be made" (*b*), "shall have obtained or shall hereafter obtain" (*c*), "shall be deemed and taken to extend" (*d*). But the Court refused to give the same effect to the words, "every deed of arrangement now or hereafter entered into" (*e*), and to the words, "no suit shall be brought or maintained" (*f*).

(*c*) *R. v. Dursley, Inhabitants*, 3 B. & Ad. 465.

(*y*) *Att.-Gen. v. Pougett*, 2 Price, 381.

(*z*) *Att.-Gen. for Prince of Wales v. Bristol Waterworks Co.*, 10 Ex. 884.

(*a*) *Murray v. The Queen*, 7 Q. B. at p. 703.

(*b*) *Churchill v. Crease*, 5 Bing. 177; *Terrington v. Hargreaves*, 5 Bing. 489.

(*c*) *Elston v. Braddick*, 2 Cr. & M. 435; *Young v. Rishworth*, 8 A. & E. 470.

(*d*) *Hulkes v. Day*, 10 Sim. at p. 47, *per* Shadwell, V.-C.

(*e*) *Wauagh v. Middleton*, 8 Ex. 352.

(*f*) *Moon v. Durden*, 2 Ex. 22.

Retro-
spective
operation
in cases of
practice or
procedure.

Another principle applicable to the class of statutes under consideration is, that statutes which do not interfere with the rights of parties, but merely regulate the practice and procedure of the Courts, are retrospective (*g*). “No suitor,” says Mellish, L.J., “has any vested interest in the course of procedure, nor any right to complain if, during the litigation, the procedure is changed, provided, of course, that no injustice is done” (*h*). The Supreme Court of the United States has laid down the same rule, and has remarked how absurd it would be for a litigant to claim as a vested right the right of delaying justice (*i*). It has been held that the County Courts Act, 1867 (*k*), the Act which empowers a judge to deprive a successful party of costs (*l*), and the provisions of the Judicature Act on the subject of security for costs (*m*), apply to actions which were pending when those Acts were passed.

Operation
extended
to matters
of sub-
sequent
creation.

The operation of statutes is often extended to matters of subsequent creation, although at the time when such statutes were passed these matters could not have been contemplated by the Legislature. The principle upon which the Courts have acted in these cases, and which justifies such an extension, may be stated in the words of Willes, J. : “The earlier statute deals with a genus within which a new species is brought by a subsequent

(*g*) *Rathbone v. Munn*, 9 B. & S. at pp. 712, 713, *per* Blackburn, J.

(*h*) *Republic of Costa Rica v. Erlanger*, L. R. 3 Ch. D. at p. 69.

(*i*) *People v. Tibbets*, 4 Cowen Sup. Ct. 384, 392.

(*k*) *Kimbray v. Draper*, L. R. 3 Q. B. 160.

(*l*) *Wright v. Hale*, 6 H. & N. 227.

(*m*) *Republic of Costa Rica v. Erlanger*, L. R. 3 Ch. D. 62.

Act" (*n*); or in those of Lord Holt; "when an Act of Parliament creates a new interest, it shall be governed by the same law that like interests have been governed before" (*o*). Thus, the Act of Elizabeth against fraudulent conveyances, and the Bankruptcy Act of the 6th Geo. IV., applied only to property which could be taken in execution. The 1 & 2 Vict. c. 110, rendered bonds, bills and notes liable to be taken in execution, and it was held that the effect of the later Act was to extend the operation of the Acts of Elizabeth and George the Fourth to this "new species of the genus property subject to execution" (*p*). The Act 18 Eliz. c. 5, which gave costs to defendants, was extended to forms of action subsequently created (*q*). The Act 31 Eliz. c. 5, which rendered it unlawful to bring an action on a penal statute, except in the county where the offence was committed, applied to an action for penalties imposed by 52 Geo. III. c. 39, upon any one who acted as a pilot without being licensed (*r*). The protection given by the Bankruptcy Act, 1849, to creditors holding security was extended to securities created by the Common Law Procedure Act, 1854 (*s*), and the power which 1 Wm. IV. c. 47, gave to a devisee for life to sell lands for payment

(*n*) *R. v. Jesse Smith*, L. R. 1 C. C. R. at p. 270. The judgment in this case, though prepared by Willes, J., was delivered by Bovill, C.J.

(*o*) *Lane v. Cotton*, 12 Mod. at p. 486.

(*p*) *R. v. Jesse Smith*, L. R. 1 C. C. R. at p. 270 (citing *Norcutt v. Dodd*, Cr. & Phill. 100; *Barrack v. McCulloch*, 3 K. & J. 110; 26 L. J. Ch. 105); *Edwards v. Cooper*, 11 Q. B. 33.

(*q*) *Williams v. Drewe*, Willes, 392.

(*r*) *Barber v. Tilson*, 3 M. & S. 429.

(*s*) *Holmes v. Tutton*, 5 E. & B. 65, 79; 24 L. J. Q. B. 346, 351.

of the debts of a testator whose estate "by law shall be liable to the payment of any of his debts," extended to copyholds, although they were not rendered liable to the payment of debts until the passing of 3 & 4 Wm. IV. c. 104 (*t*). Where, however, the 9 Geo. IV. c. 40, gave an appeal against orders adjudicating the settlement of lunatics, "in like manner and under like restrictions and regulations as against any order of removal," it was held that the provisions of 4 & 5 Wm. IV. c. 76, which gave the persons served with orders of removal a certain time for considering whether or no they would appeal, did not apply to appeals against orders adjudicating the settlement of lunatics (*u*).

It was suggested in one case that a penal Act could not be extended to anything which was not known at the time of its passing, and that, as tumbling was not an entertainment of the stage when the 10 Geo. II. c. 28, was passed, it was not subject to the penalty imposed by that statute (*x*). But where the 17 Geo. II. c. 3, imposed a penalty on persons who were authorised to take care of the poor, and who refused to permit an inspection of the rates, it was held that this Act extended to assistant overseers whose appointment was authorised by 59 Geo. III. c. 12 (*y*). Where the 8 Anne, c. 7, imposed a penalty on the importation of foreign goods prohibited to be imported into this

(*t*) *Branch v. Broune*, 2 De G. & Smale, 299.

(*u*) *R. v. West Riding Justices*, 10 Q. B. 763.

(*x*) *R. v. Handy*, 6 T. R. 286.

(*y*) *Bennett v. Edwards*, 7 B. & C. 586 ; 6 Bing. 230.

country, it was held that this penalty attached to goods the importation of which was prohibited by subsequent statutes (z). Again, it was decided that bicycles, which were not known when the Highway Act, 5 & 6 Wm. IV. c. 50, was passed, came within the description of carriages included in that Act, and within the mischief of furious driving (a).

The operation of statutes is generally confined to things which occur most frequently, and is not extended to everything that may possibly happen. *Ad ea quæ frequentius accidunt adaptantur jura* (b).

Operation of statutes confined to things of most frequent occurrence.

“In construing a statute we must not look to cases of very rare and singular occurrence, but to those of every day’s experience” (c). But this rule must not be carried so far as to defeat the real object of any statute, either by the omission of cases which come within its language, or the extension of such language to cases which it cannot fairly include. The rule and its limits are thus stated in an early case: “When the words of a law extend not to an inconvenience rarely happening, and do to those which often happen, it is good reason not to strain the words further than they reach by saying it is *casus omissus*, and that the law intended *quæ frequentius accidunt*. But it is no reason when the words of a law do enough extend to an inconvenience seldom happening that they should not extend to it as well as if it happened more fre-

(z) *Att.-Gen. v. Sagers*, 1 Price, 182.

(a) *Taylor v. Goodwin*, L. R. 4 Q. B. D. 228.

(b) 2 Inst. 137.

(c) *Hyde v. Johnson*, 2 Bing. N. C. at p. 780, *per* Tindal, C.J.

quently because it happens but seldom" (d). Where the question for decision was whether the word "forfeiture" in the 11 Geo. IV. and 1 Wm. IV. c. 65, included a seizure *quousque* by the lord of a manor, the Court of Queen's Bench held that a seizure *quousque* was included, "because otherwise the operation of the statute would be limited to cases where there was a special custom for infants and persons under disability to forfeit, and it could not be conceived that cases of such rare occurrence would be the subject of legislative enactment." But the Exchequer Chamber took the opposite view, remarking "we cannot agree that the smallness of the evil to be remedied, if the words are understood in their strict and proper sense, is a good reason for reading them in another" (e).

Operation
confined
to things
expressly
mentioned.

The operation of statutes is also confined to things which are expressly mentioned or enumerated. In such cases the Courts act in accordance with the two maxims, *expressio unius est exclusio alterius* and *expressum facit cessare tacitum* (f). The distinct and pointed enumeration of particular cases to which a statute is intended to apply, raises a natural inference that its application is not meant to be general. Where the Reform Act (2 Wm. IV. c. 45) allowed a house and land to be joined together for the purpose of conferring a qualification, it was held that two different buildings could not be joined for the same purpose (g).

(d) *Bole v. Horton*, Vaughan, at p. 373.

(e) *Dimes v. Grand Junction Canal Co.*, 9 Q. B. at p. 514.

(f) Co. Litt. 183 b, 210 a.

(g) *Dewhurst v. Fielden*, 7 M. & G. 182; 8 Scott, N. R. 1013.

The express provision with regard to *mandamus* in the Common Law Procedure Act, 1852, showed that the Act did not apply to *quo warranto* (*h*). The Act 43 Eliz. c. 2, which provided for levying the poor rate, specified coal mines only, and it was therefore held that no other mines were rateable (*i*). So where an express saving of bridge toll occurred in a statute, it was held that transit toll was extinguished (*k*). A provision in an Act that a fair and reasonable supposition of right should oust the jurisdiction of justices of the peace, overrides the Common Law provision that a *bond fide* claim of right is sufficient for that purpose (*l*).

Where, however, the words used in a statute are not specific, but are general, they do not always receive the widest construction of which they are susceptible, and their operation is often restrained either by reference to other parts of the Act, to its subject matter, or its general scope and intention. "General words in a statute," says Turner, L. J., "are not always to be construed as including every case which falls within them" (*m*). In another case the same judge quotes with approval what Plowden says of the practice of the sages of the law: "those statutes which comprehend all things in the letter they have expounded to extend but to some things; and those which generally prohibit all people from doing such an act

Operation
of general
words
may be
restrained.

(*h*) *R. v. Seale*, 5 E. & B. 1.

(*i*) *Morgan v. Crawshaw*, L. R. 5 H. L. 304.

(*k*) *Edinburgh and Glasgow Rail. Co. v. Magistrates of Linlithgow*, 3 Macq. Sc. Ap. 717, 730.

(*l*) *White v. Feast*, L. R. 7 Q. B. 353.

(*m*) *Cope v. Doherty*, 2 De G. & J. at pp. 623, 624.

they have interpreted to permit some people to do it; and those which include every person in the letter they have adjudged to reach to some persons only" (n).

Not without some reason.

The wide expressions used in this passage almost warrant an inference that general words ought always to receive a limited construction, and that the mere use of words which may include every case would justify the Court in restricting their operation. But it is clear that a limited meaning can only be given to general words where the Act itself, or the legitimate methods of interpreting it, show that such was the intention of the Legislature. "General words in a statute," says Sir William Grant, "must receive a general construction, unless you can find in the statute itself some ground for limiting and restraining their meaning by reasonable construction, and not by arbitrary addition or retrenchment" (o). "I take it," says Cockburn, C.J., "to be a sound canon of construction in the application of a statutory enactment that full effect should be given to general terms, unless from the context, or other provisions of the statute, a limitation on the general language must necessarily be implied, more especially when had such a limitation been intended it might reasonably have been expected to be expressed" (p). "When the words of the Act are general and comprehensive and the object clear," says Williams, J.,

(n) *Hawkins v. Gathercole*, 6 De G. M. & G. at p. 21, citing *Stradling v. Morgan*, Plowd. at p. 205.

(o) *Beckford v. Wade*, 17 Ves. at p. 91.

(p) *Twycross v. Grant*, L. R. 2 C. P. D. at pp. 530, 531.

“ nothing short of gross and manifest inconsistency with that object, or plain and palpable injustice which must inevitably ensue from such a construction, can authorise Courts of Law in giving a more confined and limited meaning to such general expressions than they ordinarily and naturally import and bear. What else is restraining by inference or varying by interpretation but to a certain extent recasting and remodelling the statute, or, in other words, invading the province of the Legislature itself ? ” (q).

If the context, or the declared intention of the Act, or provisions contained in other parts of it, show that general words are not to be read in their widest sense, they must receive a more limited meaning. Thus, where the Statute of Gloucester (6 Edw. I. c. 9) provided that no appeal should be abated as easily as hitherto, it was held that this clause did not extend to all appeals, but only to those which concerned the death of man, as such appeals were the subject of all the antecedent clauses (r). Where an Act empowered the Police Commissioners in Oldham to raise, lower, or alter the soil of the streets, and all the other provisions of the same section referred to paving and repairing, it was held that the soil of the streets could not be raised, lowered, or altered for any other purpose (s). The Act 3 & 4 Wm. IV. c. 98, enacted that no bill of exchange made payable at or within three months of the date thereof should be void by

By the
context.

(q) *Garland v. Carlisle*, 4 Cl. & Fin. at p. 726.

(r) 2 Inst. 317.

(s) *Brown v. Clegg*, 16 Q. B. 681.

reason of any interest taken thereon or secured thereby, and that the liability of any party to "any bill of exchange" should not be affected by any statute or law for the prevention of usury. Although the point was not actually decided, the Court of Queen's Bench thought that the general words "any bill of exchange" must be construed as "any such bill of exchange," and must be confined to bills of exchange not having more than three months to run (*t*).

By
recitals.

Where the preamble of an Act, or the recital to a single section, or group of sections, shows that the Act or section is aimed at some particular mischief, general words may be restrained so as not to go beyond the declared object of the enactment. The cases in which general words have been thus restrained will be found in a subsequent chapter (*u*).

By sub-
sequent
clauses.

General words may also be qualified by subsequent clauses or sentences in the same statute (*x*). The Lands Clauses Act (8 & 9 Vict. c. 18, s. 68) provided that any person entitled to compensation in respect of lands taken or injuriously affected, and claiming more than £50, might have the amount settled either by arbitration or the verdict of a jury. But these general words do not include a yearly tenant, for they are restrained by the express provision of sect. 121 of the same Act, that the amount of compensation payable to a

(*t*) *Vallance v. Siddel*, 6 A. & E. 932; 2 N. & P. 78.

(*u*) See *R. v. Percy*, L. R. 9 Q. B. 64; *Johnstone v. Huddleston*, 4 B. & C. 922, 936; *Winn v. Mossman*, L. R. 4 Ex. 292; in chapter 6.

(*x*) *R. v. Abp. of Armagh*, 8 Mod. at p. 8.

yearly tenant shall be ascertained by two justices (*y*). So where one section of an Act empowered a railway company to make a line upon lands delineated on a plan, and described in a book of reference, while a later section provided that nothing in the Act should authorise the Company to enter upon any lands without the consent of the owner, it was held that the general words used in the first part of the Act were restrained by the subsequent section, and that the Company could not enter upon the lands contained in the plan and book of reference without the consent of their owners (*z*). Again, the ninth chapter of Magna Charta provided that the Barons of the Cinque Ports and all other ports should have all their liberties and free customs. These general words refer to such liberties and customs only as are not taken away by express words in subsequent parts of the same statute, and do not include the right of holding pleas of the Crown, which is taken away by the seventeenth chapter (*a*).

The operation of general words may also be restrained by reference to the subject-matter of the Act in which they are inserted (*b*). "All words," says Lord Bacon, "if they be general and not express and precise, shall be restrained unto the fitness of the matter and the person. So the Statute of Wrecks that willeth that goods wrecked

(*y*) *R. v. M. S. and L. Rail. Co.*, 4 E. & B. 88, 103.

(*z*) *Clarence Rail. Co. v. Great North of England, &c., Rail. Co.*, 4 Q. B. 46.

(*a*) 2 Inst. 31.

(*b*) *De Boinville v. Arnold*, 1 C. B. N. S. at p. 21, *per* Willes, J.; *East India Interest*, 3 Bing. at p. 196, *per* Best, C.J.

where any live domestical creature remaineth in the vessel, shall be preserved and kept to the use of the owner that shall make his claim by the space of one year, doth not extend to fresh victuals, or the like, which is impossible to keep without perishing or destroying it; for in these and the like cases general words may be taken, as was said, to a rare or foreign intent, but never to an unreasonable intent" (c). Where the Act, 1 & 2 Vict. c. 110, made judgments a charge upon lands, tithes, &c., it was held that the phrase included lay tithes only, and did not extend to ecclesiastical benefices (d). Thus, the words "any creditor" in the Bankruptcy Act, 1849 (12 & 13 Vict. c. 106, s. 112), was restricted to persons who were creditors at the time of adjudication, and were entitled to prove in the bankruptcy (e). Again, the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71, s. 88), enabled the trustee in the bankruptcy of a beneficed clergyman to apply for a sequestration of his living, and gave such sequestration priority over any other sequestration issued after the commencement of the bankruptcy. It was held that the sequestration issued at the instance of a trustee had priority over any sequestration issued by an individual creditor, but not over a sequestration issued by the trustee under another adjudication against the same bankrupt, as both these sequestrations were for the benefit of all the creditors (f).

(c) *Bacon's Maxims of the Law*, Regula 10, Spedding's edition, vol. 7, pp. 356, 357.

(d) *Hawkins v. Gathercole*, 6 De G. M. & G. 1, 21.

(e) *Re Poland*, L. R. 1 Ch. 356.

(f) *Ex parte Chick, re Meredith*, L. R. 11 Ch. D. 731.

General words are further restrained to things which are lawful (*g*), and to proceedings which are in harmony with the previous policy of the law. They are not usually to be construed so as to alter the existing law, unless no sense or meaning can be put upon them which is consistent with any other intention (*h*). Thus, general words enabling all persons to devise their land by will would not confer that power upon infants, persons of unsound mind, or married women (*i*). The general words of Westminster the Second (13 Edw. I.), giving creditors a remedy by *elegit*, and empowering auditors to commit to the next gaol all bailiffs or receivers who are in arrears, do not render infants liable either to an *elegit* (*k*), or to imprisonment (*l*). Nor are necessary incidents (*m*), or customs (*n*), taken away by the general words of a statute. An Act which provides that conveyances in a certain form "shall be valid and effectual in law to all intents and purposes" does not cure a defective title (*o*). The Act 12 Car. II. c. 17, providing that ministers put in possession of benefices during the Commonwealth should be allowed to continue in possession, "notwithstanding any other matter

To things which are lawful and in harmony with previous policy of law.

(*g*) *L. B. & S. C. Rail. Co. v. L. & S. W. Rail. Co.*, 4 De Gex & Jones, at p. 396, *per* Turner, L.J.

(*h*) *Minet v. Leman*, 20 Beav. 269.

(*i*) *Beckford v. Wade*, 17 Ves. at p. 91; *Osgood v. Breed*, 12 Mass. 525.

(*k*) 2 Inst. 395.

(*l*) *Stowel v. Lord Zouch*, Plowd. at p. 363a.

(*m*) 2 Inst. 501.

(*n*) *Hutchins v. Player*, Bridg. at p. 319; *Simson v. Moss*, 2 B. & Ad. 543.

(*o*) *Ward v. Scott*, 3 Camp. 284, *per* Lord Ellenborough, C.J.

N

or thing by them done, or omitted to be done," did not confirm a simoniacal appointment (*p*). The Act 27 Geo. III. c. 44, which enacted that no suit for incontinence should be commenced in an Ecclesiastical Court after eight months, was held to apply only to suits for reformation of manners and not to suits for deprivation (*q*).

Conflicting
opinions
as to the
effect of
general
words.

The use of general words in the Acts which conferred jurisdiction on the Admiralty Court and the County Courts has given rise to many differences of opinion. It was enacted by the 24 Vict. c. 10, s. 7, that the High Court of Admiralty should have jurisdiction over any claim for damage done by any ship. The Court of Admiralty itself and the Privy Council held that these words extended to any claim for personal injuries (*r*); and the Court of Admiralty further decided that a claim under Lord Campbell's Act was also included (*s*). The Court of Queen's Bench, in a considered judgment, expressed an opinion that the word "damage" did not extend to personal injuries, and decided that the Admiralty Court had no jurisdiction to entertain a suit under Lord Campbell's Act (*t*). The question came before the Court of Appeal in another case, and the judges who composed the Court were equally divided (*u*). The effect of the County Courts Admiralty Jurisdiction Acts, 1868 and 1869, has not been left in

(*p*) *Stur v. Phillips*, 3 All. 220.

(*q*) *Frost v. Bagnall*, 5 B. & C. 400, 1 Dow. & Clark, 115.

(*r*) *The Sigma*, L. R. 2 A. & E. 24; *The Beta*, L. R. 2 P. C. 447.

(*s*) *The Epsilon*, L. R. 3 A. & E. 289.

(*t*) *Smith v. Brown*, L. R. 6 Q. B. 729, dub. Blackburn, J.

(*u*) *The Franco*, L. R. 2 P. D. 163.

the same uncertainty. Under those Acts certain County Courts received a jurisdiction, which was limited in amount, to try "any claim for necessities," "any claim for damage by collision," "any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship." In several cases these general words were limited, and it was held that the intention of the Legislature was to confer on the County Courts such a jurisdiction only as the Court of Admiralty itself possessed. Thus it was decided that under these Acts the County Courts had no jurisdiction to try cases of collisions between two barges propelled by oars (*x*), or claims for a breach of a charter party (*y*), or for demurrage (*z*), or for necessities supplied to a British ship at the port to which she belonged (*a*). But the Privy Council held that the County Courts had jurisdiction to try a claim arising out of a charter party, and that any other decision would give no effect whatever to the words of the statute (*b*). These conflicting decisions were brought before the Court of Appeal, and the judgment of the Privy Council was unanimously adopted (*c*).

The operation of general words has almost invariably been restrained when they follow closely upon words of a limited meaning, upon words

Operation
of general
words
confined
to things

(*x*) *Everard v. Kendall*, L. R. 5 C. P. 428.

(*y*) *Simpson v. Blues*, L. R. 7 C. P. 290.

(*z*) *Gunnestad v. Price*, L. R. 10 Ex. 65.

(*a*) *The Dowse*, L. R. 3 A. & E. 135.

(*b*) *Cargo ex Argos*, L. R. 3 A. & E. 568, 5 P. C. 134.

(*c*) *Brown v. The Alina*, L. R. 5 Ex. D. 227.

*ejusdem
generis.*

which refer to a particular class of things or persons, or which necessarily exclude such matters as are of higher dignity. In all these cases general words are confined to things and persons *ejusdem generis* with those enumerated, or of inferior quality. Thus the words of Acts which impose rates or taxes on "lands, tenements, or hereditaments," or which provide for compensation in respect of "any land, house, shop, messuage, or other tenement," do not extend to tithes (*d*), tolls payable in respect of a market (*e*), or pipes laid down by a water company (*f*). So the words "any way or other easement" in the Prescription Act, 2 & 3 Wm. IV. c. 71, do not include a right to the passage of wind or air to a mill (*g*). Where the Turnpike Act, 3 Geo. IV. c. 126, imposed a penalty on any person hauling or drawing "any timber or stone or other thing otherwise than upon wheeled carriages," it was held that this did not extend to straw, but was confined to things as weighty and as likely to cause injury to roads as timber or stone (*h*). The Act which authorises landlords to distrain for rent "all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever which shall be growing on any part of the estates demised," does not cover trees, shrubs, and plants

(*d*) *R. v. Nevill*, 8 Q. B. 452; *R. v. Nene*, 9 B. & C. 875.

(*e*) *Colebrooke v. Tickell*, 4 A. & E. 916; *R. v. Mosley*, 2 B. & C. 226.

(*f*) *R. v. Manchester & Salford Waterworks Co.*, 1 B. & C. 630; *East London Waterworks Co. v. Mile End Old Town*, 17 Q. B. 512; *Chelsea Waterworks Co. v. Bowley*, 17 Q. B. 358.

(*g*) *Webb v. Bird*, 10 C. B. N. S. 268, 13 C. B. N. S. 841.

(*h*) *Radnorshire County Roads Board v. Evans*, 3 B. & S. 400.

growing in a nursery garden (*i*). The Act 3 & 4 Wm. IV. c. 90, imposed a special rate upon "houses, buildings, and property other than land." It was held that the word "property" meant property *ejusdem generis* with houses and buildings, and did not include a canal and towing path (*k*). The Act 13 Geo. III. c. 67, provided that the Bishop of Durham should have full and free liberty of mining and working mines belonging to the See of Durham wheresoever the same should be, and of leading and carrying away the coals and minerals gotten thereout, "or out of any other lands or grounds whatsoever." This section did not give the bishop a right to lead over the lands inclosed by that Act any coal which he had got from mines not belonging to the see, but merely "extended his rights to lands and grounds other than mines, such as quarries and chalk pits" (*l*). The Winding-up Acts provided that the Court might wind up a company if a special resolution was passed, or the business of the company was not commenced within a year, or the number of members was reduced below seven, or the company was unable to pay its debts, or if the Court thought it just and equitable that the company should be wound up. It was held that the grounds upon which the Court might form this conclusion must be grounds *ejusdem generis* with those already enumerated (*m*).

(*i*) *Clark v. Gaskarth*, 8 Taunt. 431.

(*k*) *R. v. Overseers of Neath*, L. R. 6 Q. B. 707.

(*l*) *Midgley v. Richardson*, 14 M. & W. 595; *Hedley v. Fenwick*, 3 H. & C. 349.

(*m*) *Ex parte Spackman*, 1 M'N. & G. 170; *Re Anglo-Greek Steam Co.*, L. R. 2 Eq. 1.

On similar grounds the words "parochial relief or other alms" mean other parochial alms (*n*); "county, riding, or division" mean a division analogous to a county or riding (*o*); "offices of mayors, bailiffs, portreeves, and other offices" refer to other corporate offices (*p*); "cities, towns, corporate boroughs, and places" do not include places which are not incorporated (*q*); "transport in any waggon, cart, sleigh, boat, or otherwise" cannot extend to driving cattle on foot (*r*). The Sunday Act, 29 Car. II. c. 7, which enacts that "no tradesman, artificer, workman, labourer, or other person whatsoever" shall exercise his ordinary calling on the Lord's Day, does not extend to attorneys (*s*), farmers (*t*), or drivers of stage coaches (*u*). A list of persons employed in several capacities, beginning with artificers or servants in husbandry and ending with general words, though not absolutely confined to the employments specified (*x*), does not extend to a domestic servant (*y*) or a man in possession (*z*). Where notice of action for anything done under the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), was required to be given to "any

(*n*) *R. v. Mayor of Lichfield*, 2 Q. B. 693.

(*o*) *Evans v. Stevens*, 4 T. R. 224, 459.

(*p*) *R. v. Hall*, 1 B. & C. 237.

(*q*) *R. v. Wallis*, 5 T. R. 375.

(*r*) *U. S. v. Sheldon*, 2 Wheat. 119.

(*s*) *Peate v. Dicken*, 1 C. M. & R. 422.

(*t*) *R. v. Cleworth*, 4 B. & S. 927, reported as *R. v. Silvester*, 33 L. J. M. C. 79.

(*u*) *Sandiman v. Breach*, 7 B. & C. 96.

(*x*) *Lowther v. Earl of Radnor*, 8 East, 113.

(*y*) *Kitchen v. Shaw*, 6 A. & E. 729.

(*z*) *Branwell v. Penneck*, 7 B. & C. 536.

district surveyor or other person," these general words were confined to any other person clothed with an official character (*a*).

Cases in which general words have been confined to matters of inferior dignity to those specified in the words preceding, occur most frequently in the earlier books, and in the construction of ancient statutes. A number of instances may be found in Lord Coke's Reports, and in his second Institute. Thus the words of Westminster the Second (13 Edw. I. c. 41), "abbots, priors, keepers of hospitals, and other religious houses," do not include bishops, as they are superior to abbots (*b*). The same statute (c. 47), which enumerates rivers, commencing with the Humber, does not comprise the Thames, *Thamesis nobile illud flumen* (*c*). So the Statute of 13 Eliz. c. 10, beginning with colleges, deans and chapters, and ending with "others having spiritual promotions," does not extend to bishops (*d*). An Act of Parliament, which is the highest possible manner of conveyance, is not included in the words "by any other means," following upon dissolution, renouncing, relinquishing, or forfeiture (*e*). In the Act 22 & 23 Car. II. c. 25, the words "manors or other royalties" mean royalties of the same nature with manors. "If royalties of a higher nature had been meant the statute would have begun with

(*a*) *Williams v. Golding*, L. R. 1 C. P. 69.

(*b*) 2 Inst. 457; *Abp. Canterbury's Case*, 2 Rep. 46b.

(*c*) 2 Inst. 478.

(*d*) *Abp. Canterbury's Case*, 2 Rep. at 46 b.

(*e*) *Ibid.* 2 Rep. at 46 b.

them" (*f*). The Dean of St. Paul's was not included in the words "great men or noblemen or noblewomen" which occur in the Act 37 Hen. VIII. c. 12, because by the order of those words "great men must mean persons superior in certain respects to noblemen and noblewomen" (*g*). In later cases it has been held that an Act imposing duties upon "copper, brass, pewter, tin, and all other metals not enumerated," did not apply to gold and silver (*h*), and that the words "wherry, lighter, vessel, barge, or other craft," did not include a brig (*i*) or a steam-tug (*k*).

Not so as
to deprive
the words
used of all
effect.

Where, however, the result of thus restricting general words would be that they would have no effect at all, they must be extended to things superior in quality to those enumerated. Thus the Statute of Marlebridge, 52 Hen. III. c. 19, refers to "Courts Baron or other Courts," and it is held that these words extend to the Courts of Record at Westminster, though the Act begins with inferior Courts, "for otherwise these general words would be void; for it cannot, according to the general rule, extend to inferior Courts, for none be inferior or lower than these that be particularly named" (*l*). For the same reason the restriction of general words to things *ejusdem generis* must not be carried to

(*f*) *Earl of Ailesbury v. Pattison*, 1 Dougl. at p. 30, *per* Lord Mansfield, C.J.

(*g*) *Warden of St. Paul's v. The Dean*, 4 Price, 65, 79.

(*h*) *Casher v. Holmes*, 2 B. & Ad. 592.

(*i*) *Blanford v. Morrison*, 15 Q. B. 724.

(*k*) *Reed v. Ingham*, 3 E. & B. 889. See, however, *Tisdell v. Combe*, 7 A. & E. 788.

(*l*) 2 Inst. 137.

such an excess as to deprive them of all meaning. The enumeration of particular things is sometimes so complete and exhaustive as to leave nothing which can be called *ejusdem generis*.

In such a case we must have recourse to the rule that "if the particular words exhaust a whole genus, the general word must refer to some larger genus" (*m*). Thus the words "all halls, gaols, chapels, meeting-houses, schools, almshouses, and other public buildings" include an infirmary and fever hospital (*n*). The words "mask, dress, or other disguise, or any letter or any other article or thing," brought into a prison with intent to facilitate the escape of any prisoner, include a crow-bar (*o*); "street, lane, or other place" may include a parish (*p*); "dog, gun, net, or other engine or instrument for the purpose of killing or taking game," a snare (*q*); "dwelling-house, out-house, yard, garden or other place or places," a warehouse (*r*); "slaughter-house, shop, building, market or other place," a yard (*s*); "house, office, room or other place used for betting," an umbrella employed as a tent (*t*), and enclosed grounds which were used for pigeon-shooting (*u*). General words may refer to a larger genus.

The Municipal Corporation Act (5 & 6 Wm. IV.

(*m*) *Fenwick v. Schmalz*, L. R. 3 C. P. at p. 315, *per* Willes, J.

(*n*) *Governors of Bedford Infirmary v. Commissioners of Bedford*, 7 Ex. 768.

(*o*) *R. v. Payne*, L. R. 1 C. C. R. 27.

(*p*) *R. v. Spratley*, 6 E. & B. 363.

(*q*) *Allen v. Thompson*, L. R. 5 Q. B. 336.

(*r*) *R. v. Edmundson*, 2 E. & E. 77.

(*s*) *Young v. Grattridge*, L. R. 4 Q. B. 166.

(*t*) *Bows v. Fenwick*, L. R. 9 C. P. 339.

(*u*) *Eastwood v. Miller*, L. R. 9 Q. B. 440.

c. 76), provides that an alderman shall take the place of the mayor at an election if the mayor be "dead, absent, or otherwise incapable of acting." These words do not refer solely to physical incapacity, but include disqualification (x). The Act, 15 & 16 Vict. c. 81, empowers a committee of county justices to require "the overseers of the poor, constables, assessors, collectors and any other persons whomsoever" to produce books touching the county rates. It was held that these words authorised the committee to summon not merely the persons named, but all who were able to produce documents relating to the annual value of property liable to be assessed to the county rate (y). A market Act imposed a penalty on any person selling elsewhere than in the market place "any article in respect of which tolls are by this Act authorised to be taken other than eggs, butter, or fruit." The Court held that these words were not confined to things *ejusdem generis* with eggs, butter, and fruit, but that a horse was an article within the section (z). An Act for paving, lighting and watching a town empowered trustees to rate the tenants and occupiers of "houses, shops, malt-houses, granaries, warehouses, coach-houses, yards, gardens, garden ground, stables, cellars, vaults, wharves, and other buildings and hereditaments, meadow and pasture ground excepted." From the terms of this exception the Court inferred that the word hereditaments was not merely *ejusdem generis*

(x) *R. v. White*, L. R. 2 Q. B. 557.

(y) *R. v. Doubleday*, 3 E. & E. 501.

(z) *Llandaff Market Co. v. Lyndon*, 8 C. B. N. S. 515.

with the things enumerated, but was meant to comprehend land in general, and it therefore held that a gas company was rateable for the ground occupied by its pipes and other apparatus (a).

Another instance of restriction is to be found in the case of general references. "It is a sound rule of construction laid down in 2 Inst. 287, but applicable to modern as well as to ancient statutes, perhaps, indeed, more so from necessity in consequence of the looseness of expression which now prevails, that 'in construction of general references in Acts of Parliament, such reference must be made only as will stand with reason and right'" (b). Again it is said, "always in statutes relation shall be made according to the matter precedent" (c). In deciding whether words of reference are to be understood in the largest or in the narrowest sense, whether they extend to the whole or to a part of any Act, the Court considers the subject-matter of the section in which such words are found, and contrasts it with that of the preceding sections. Thus where a section which dealt with a new subject used the words "nothing hereinbefore contained," it was held that the reference was confined to matters contained in that section, and did not extend to earlier portions of the Act (d). So where the Act 6 Geo. IV. c. 125, dealing with pilots and pilotage, exempted from penalties the master or mate of any ship being the owner of

Operation
of general
references
restricted.

(a) *R. v. Shrewsbury*, 3 B. & Ad. 216.

(b) *R. v. Badcock*, 6 Q. B. at p. 797, per Lord Denman, C.J.

(c) *Curson's Case*, 6 Rep. at p. 76 b.

(d) *R. v. Cambrian Rail. Co.'s Scheme*, L. R. 3 Ch. 278.

such ship and residing at Dover, Deal, or the Isle of Thanet, "for conducting or piloting such his own ship or vessel from any of the places aforesaid up or down the rivers Thames or Medway," it was held that the places aforesaid meant the places named in the section, and not places which had been named in earlier parts of the Act (*e*). Again, the Highway Act, 5 & 6 Wm. IV. c. 50, imposed highway rates on all property liable to the poor rate. Section 113 of the Act provided that "nothing in this Act contained" should apply to any bridges or roads which were paved, repaired or cleansed, broken up or diverted under the provisions of any local Act of Parliament. It was held that these words did not relieve such bridges from rateability, but referred merely to such parts of the Act as dealt with paving and repairing (*f*). On the other hand, where two sections at some distance from each other related to compensation, the words "as aforesaid," in a third section dealing with the same subject, were taken to refer to both the earlier sections (*g*).

Where the words of reference instead of being general are confined to something expressly described in the sentences immediately preceding, the same test may be applied for the purpose of ascertaining whether they relate to the whole or to part of such description. The Act 26 Geo. III. c. 107, enacted that every person having actually served in the militia and being a married man

(*e*) *Peake v. Screech*, 7 Q. B. 603.

(*f*) *R. v. Paynter*, 13 Q. B. 399.

(*g*) *R. v. Eastern Counties Rail. Co.*, 2 Q. B. 347.

might set up and exercise any trade in any town, and that "no such" militiaman should be liable to be removed from any such town until he became chargeable. It was held that the words "no such militiaman" did not refer to persons who had actually served in the militia and were married, unless they had also set up some trade in a town (*h*). In another case it was held that although "in strict grammatical construction the relative ought to apply to the last antecedent," it might, if the subject and meaning of a statute required, be connected with earlier words in the section. "Suppose, for example, this phrase, 'If there be any powers or provisions of an Act of Parliament which the corporation are sole commissioners for executing;' is it not obvious here that the relative 'which' refers to the 'powers and provisions' and not to the 'Act of Parliament'?" (*i*).

Analogous in principle to the restriction of general words of reference is the construction of sections which contain general words *reddendo singula singulis*. This method of limiting the effect of expressions which are obviously too wide to be construed literally, is most frequently adopted when the opening words of a section are general, while the succeeding parts of it branch out into particular instances. "Where several words importing power, authority and obligation are found at the commencement of a clause containing several branches," says Bayley, J., "it is not necessary

(*h*) *R. v. Gwenop, Inhabitants*, 3 T. R. 133.

(*i*) *Staniland v. Hopk'ns*, 9 M. & W. at p. 192, *per* Lord Abinger, C.B.

that each of those words should be applied to each of the different branches of the clause ; it may be construed *reddendo singula singulis*; the words giving power and authority may be applicable to some branches, those of obligation to others" (*k*). In that case the Bristol Dock Company was empowered by 43 Geo. III. c. 140, to make a floating dock. One of the sections provided "it shall and may be lawful for the directors, and they are hereby authorised and required, to form a new common sewer, and also to alter and reconstruct all or any of the sewers of the city, and also to make such other alterations and amendments in the sewers as may or shall be necessary." It was decided that the directors of the company were bound to form a new common sewer, but were merely authorised and not bound to alter and reconstruct the other sewers of the city (*l*). So the Act 33 Geo. III. c. 52, which consolidated the Acts respecting the East India Company, provided that it should not be lawful for any defendant to plead or set up in bar of an action any Act or Acts in the whole or in part repealed by that statute. Upon this section it was held that where part of an Act was repealed a defendant might not set up that part, but that he might set up any other part which was not repealed (*m*). Again, the Act 3 & 4 Wm. IV. c. 22, provided that "the property of and in all lands, tenements, hereditaments, buildings, erections, works and other things

(*k*) *R. v. Bristol Dock Co.*, 6 B. & C. at pp. 191, 192.

(*l*) *Ibid.* p. 181.

(*m*) *Cumden v. Anderson*, 6 T. R. 723.

which shall have been or shall hereafter be purchased, obtained, erected, constructed or made by or by order of, or which shall be within or under the view, cognisance, or management of any Commissioners of Sewers," should be vested in such commissioners. If this section had been read literally the property in all lands which were under the view or cognisance of any Commissioners of Sewers would have vested in them, and the owners would have been deprived of their lands without compensation. To avoid this result the Court read the words *reddendo singula singulis*, and held that the section vested in the Commissioners of Sewers the property in lands purchased by them, and in works and other things under their view, cognisance and management (n).

In all these cases the general words which have been restricted occur at the beginning of sections, and it has usually been stated that words at the end override the whole sentence (o). But where a Turnpike Act provided that ditches should be made, scoured, cleansed and kept open, and that sufficient trunks and tunnels should be made and laid where carriage-ways or footways led out of the turnpike-road into the adjoining lands or grounds, by the occupiers of such lands or grounds, it was held that the duty of cleansing the ditches was not

Where the general words occur at the end of sections.

(n) *Stracey v. Nelson*, 12 M. & W. 535 ; 13 L. J. Ex. 97. This case is cited by Willes, J., in *Hinde v. Chorlton*, L. R. 2 C. P. at p. 116, as deciding that where lands vested in the Commissioners of Sewers, only the control over the land and not the freehold passed to them. It has been shown by Cotton, L.J., in *Coverdale v. Charlton*, L. R. 4 Q. B. D. at p. 124, that the case establishes no such principle.

(o) *R. v. Cambridgeshire, Justices*, 4 A. & E. 111, 119.

imposed on the occupiers of adjoining lands, and that they were not required to do more than to make and lay the trunks and tunnels (*p*). The "Act to regulate Parochial Assessments" (6 & 7 Wm. IV. c. 96) provided that every poor-rate should contain an account of all the particulars set forth in a form given in the schedule, and that the churchwardens and overseers or some other officers should sign a declaration given at the end of that form, and added the words "otherwise the said rate shall be of no force or validity." It was held that the provision invalidating the rate applied solely to the words which immediately preceded, and that the rate was not invalid if the particulars prescribed in the earlier part of the section were not properly given (*q*). The Act 3 Geo. IV. c. 39, enacted that the defeasance to a warrant of attorney must be written on the same paper or parchment with the instrument itself, otherwise it should be void to all intents and purposes. It was held that these words applied only to such warrants as the earlier sections of the Act rendered invalid against assignees in bankruptcy in the event of their not being filed within twenty-one days, and did not affect the validity of warrants of attorney as between the parties (*r*). The Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), provided that if any bankrupt should be arrested for debt while he was protected by the order of the Court

(*p*) *Merivale v. Exeter Road Trustees*, L. R. 3 Q. B. 149.

(*q*) *R. v. Fordham, Inhabitants*, 11 A. & E. 73.

(*r*) *Morris v. Mellin*, 6 B. & C. 446 ; *Bennett v. Daniel*, 10 B. & C. 500.

he should be discharged on the production of his protection order to the officer who made the arrest, and that any officer detaining a bankrupt after such protection had been shown to him should be liable to a penalty. It was held that the officer who arrested a bankrupt was the only one liable to such a penalty, and that the Act did not extend to a gaoler who detained a bankrupt when delivered into his custody, although the bankrupt was protected by the order of the Court, and that protection was shown to the gaoler (s).

The operation of statutes may be either extended or restricted according to the manner in which their provisions are treated as imperative or directory. In the first case, words which in their primary sense are words of permission, and which, if taken literally, confer power or authority, have been held to impose a duty. In the second case, words which in their primary sense are words of command have been relaxed or modified, and an entire departure from their literal meaning has been considered a substantial compliance with their spirit.

No general rule can be established for the purpose of determining whether the words of any statute are to be considered imperative or directory. "In each case," it is said, "we must look to the provisions of the Act and its subject-matter" (t), or "to the whole scope of the statute to be construed" (u). Any attempt to attain

Operation of statutes affected where words are treated as imperative or directory.

No general rule on this subject.

(s) *Myers v. Veitch*, L. R. 4 Q. B. 649.

(t) *Nicholl v. Allen*, 1 B. & S. at p. 928, per Crompton, J.

(u) *Liverpool Borough Bank v. Turner*, 2 De G., F. & J. at pp. 507, 508, 30 L. J. Ch. at p. 380, per Lord Campbell, C.

Conflict of
decisions.

greater certainty than this principle would allow, any attempt to lay down a positive rule, must lead inevitably to a conflict between numerous decisions, as there is probably no question connected with the construction of statutes which has given rise to greater difference of opinion. Thus it has been stated in one case, that "the words 'shall and may' in general Acts of Parliament are to be construed imperatively" (x), while in another case, we read, "I do not agree that 'shall and may,' in a statute, are always imperative; they must be deemed imperative or not according to the subject-matter" (y).

It has been said that in all cases where an Act of Parliament empowers a Court of Justice to do any act, using the words, "it shall be lawful," those words are imperative, and leave the Court no discretion. "That is the usual courtesy of the Legislature in dealing with the Judicature. 'It shall be lawful,' means in substance that it shall not be lawful to do otherwise" (z). But elsewhere we read that "in all cases where the words, 'it shall be lawful,' are used in an Act of Parliament with reference to a Court of Justice, and are not otherwise controlled, they give the Court a jurisdiction, leaving it to the Court to exercise its discretion according to the requirements of justice in each particular case" (a). So it was held that the Act

(x) *Att.-Gen. v. Lock*, 3 Atk. at p. 166, *per* Lord Hardwicke, L.C.

(y) *Hudd v. Ravenor*, 2 Brod. & Bing. at p. 665, *per* Park, J.

(z) *Re Neath and Brecon Rail. Co.*, L. R. 9 Ch. at pp. 264, 265, *per* James & Mellish, L.JJ.

(a) *Re Bridgman*, 1 Drew. & Sm. at p. 169, *per* Kindersley, V.-C.

53 Geo. III. c. 141, enacting that it should be lawful for the Court to set aside assurances given to secure an annuity, was not imperative, but gave the Court a discretion (*b*). The County Courts Act 13 & 14 Vict. c. 61, provided that if the plaintiff in an action should make it appear to the satisfaction of a Court or judge that an action brought in a superior Court could not have been brought in a County Court, the Court or judge “may” give him his costs. The Court of Exchequer held at first that this word was permissive (*c*), but after the Court of Common Pleas (*d*) and the Court of Queen’s Bench (*e*) had both decided that it was imperative, the Court of Exchequer yielded to the majority (*f*). The Act 17 Geo. II. c. 38, enacts that in case churchwardens and overseers refuse or neglect to account to their successors, “it shall and may be lawful” for justices of the peace to commit them. It was held that this Act gave the justices a discretion (*g*). But the Act 27 Geo. II. c. 20, which provides that where justices are empowered to issue a distress warrant, “it shall and may be lawful” for them to order the goods to be sold, was held to be imperative (*h*).

Again, it has been laid down that “words of permission in an Act of Parliament, if tending to

(*b*) *Cook v. Tower*, 1 Taunt. 372; *Barber v. Gamson*, 4 B. & Ald. 281; *Girdlestone v. Allan*, 1 B. & C. 61.

(*c*) *Jones v. Harrison*, 6 Ex. 328; *Palmer v. Richards*, 6 Ex. 335.

(*d*) *Macdougall v. Paterson*, 11 C. B. 755.

(*e*) *Crake v. Powell*, 2 E. & B. 210.

(*f*) *Asplin v. Blackman*, 7 Ex. 386.

(*g*) *R. v. Justices of Norfolk*, 4 B. & Ad. 238.

(*h*) *R. v. Williams*, 2 C. & K. 1001.

promote the public benefit, are always held to be compulsory" (*i*). This proposition apparently rests upon the authority of a case which is supposed to have decided that permissive language in an Act empowering a sheriff to take bail, and in another empowering churchwardens and overseers to make a rate to reimburse constables, was to be construed as imperative (*k*). As that case is still cited as establishing the principle that "where a statute directs the doing of a thing for the sake of justice or the public good, the word 'may' is the same as the word 'shall'" (*l*), it is worthy of remark that the word "may" does not occur in either of the statutes mentioned in that case. The Act 23 Hen. VI. c. 9, does not provide that the sheriff may take bail, but that he shall take bail (*m*). The words of the Act, 14 Car. II. c. 12, are that the churchwardens and overseers "shall have power and authority to make an indifferent rate" (*n*). Thus the judgment on which so much reliance has been placed, and from which a general rule has been so often deduced, has either been misreported, or rests upon an unsound basis.

(*i*) *R. v. Mayor of Hastings*, 1 Dow. & Ry. at p. 149.

(*k*) *R. v. Barlow*, 2 Salk. 609, Carth. 293, reported as *R. v. Derby, Inhabitants*, Skin. 370.

(*l*) See *R. v. Bishop of Oxford*, L. R. 4 Q. B. D. at p. 258, *per* Cockburn, C.J.

(*m*) This has been observed by Chancellor Kent in *Newburgh Turnpike Co. v. Miller*, 5 Johnson, Chancery Reports, at p. 101, and by Pollock, C.B., in *Jones v. Harrison*, 6 Ex. at p. 331, where it is stated that the roll of Parliament has been inspected for the purpose of rectifying this error. The original words of the Act are, "lesse-rout hors du prison sur resonable suerté;" see note to *Lancaster Canal Co. v. Parnaby*, 11 A. & E. at p. 231.

(*n*) *Lancaster Canal Co. v. Parnaby*, 11 A. & E. at p. 231.

As the establishment of any guiding principle is attended by so many difficulties, it will be safer to consider what are the cases in which words of permission have been treated as imperative. Such effect has been given to them in several cases where power or authority has been conferred on Courts, public officers, or public bodies, to be exercised for the benefit of any class, or any members of the community. "When a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised to exercise the authority when the case arises. The word 'may' is not used to give a discretion but to confer a power" (o). It was enacted by 13 Eliz. c. 7, that the Lord Chancellor, upon complaint being made to him against any bankrupt, should have full power and authority to grant a commission which was to take order for the bodies, lands, and goods of bankrupts. Upon the construction of this Act it was held that the Lord Chancellor was bound to issue such a commission (p). In like manner, the Acts which empower the Court to wind up insolvent companies (q), to stay actions against such companies after a winding up has commenced (r), to grant execution against a shareholder if execution against a company prove ineffectual (s), have been regarded as imperative. The same view was taken of the words in the 7 Will. IV. and 1 Vict. c. 78, which

Cases in which words of permission have been considered imperative.

(o) *Macdougall v. Paterson*, 11 C. B. at p. 773, per Jervis, C.J.

(p) *Alderman Backwell's Case*, 1 Vern. 152. See, however, *Re Bridgman*, 1 Drew. & Sm. 164.

(q) *Bowes v. Hope Society*, 11 H. L. C. 389, 402.

(r) *Marson v. Lund*, 13 Q. B. 664.

(s) *Morisse v. Royal British Bank*, 1 C. B. N. S. 67.

empowered the Court to inquire into the title of an applicant to be inserted on the burgess roll of any borough (*t*). Where the 5 & 6 Vict. c. 54, provided that if agreements were made for giving land or money instead of tithes, and the land or money seemed to the Tithe Commissioners a fair equivalent, they should be empowered to confirm such agreements, the Court said, "We are of opinion that in the cases to which the section applies, the Tithe Commissioners are bound to act under it, and must confirm according to its provisions. The words undoubtedly are only empowering; but it has been so often decided as to have become an axiom that in public statutes words only directory, permissive, or enabling, may have a compulsory force where the thing to be done is for the public benefit, or in advancement of public justice" (*u*).

In the United States an Act provided that it should be lawful for the mayor, aldermen, and commonalty of New York to make sewers and cleanse them. It was held that as the public interest called for the execution of the power thus conferred upon the corporation, the statute was imperative, and the exercise of the power became a duty (*x*). This principle has sometimes been extended to companies incorporated by private Acts, and even to individuals. Where an Act provided that it should be lawful for a railway company to construct bridges of a certain height and span over the roads which were crossed by the

(*t*) *R. v. Mayor of Harwich*, 8 A. & E. 919.

(*u*) *R. v. Tithe Commissioners*, 14 Q. B. 459, 474.

(*x*) *Mayor of New York v. Furze*, 3 Hill, 612.

railway, it was held that the words were inserted for the benefit of the public, and that the height and span prescribed were compulsory (*y*). So the provisions that actions by and against banking companies "shall and lawfully may" be brought in the names of or against their public officers (*z*), or their official manager (*a*), are imperative, although an Act which makes it "sufficient" to state the name of the secretary, or of a director, in all actions brought against a company, is not compulsory (*b*). The 8 & 9 Will. III. c. 11, which provides that in actions on any penal sum for non-performance of covenants, the plaintiff "may" assign breaches, or suggest them on the roll, is imperative, as the statute is meant for the benefit of defendants (*c*).

In certain cases language which, taken literally, would seem to give an absolute discretion to those upon whom an authority is conferred, has been regarded as imperative. It was, indeed, declared in one case that the words "may be deemed proper" cannot be considered compulsory, since the effect of reading "may" in such a sentence as "must" would be that the whole passage would be rendered insensible (*d*). Where, however, the 2 & 3 Vict. c. 84, enacted, that if any contribution by overseers of a parish was in arrear, it should be lawful

Words which give a discretion held to be imperative.

(*y*) *R. v. Caledonian Rail. Co.*, 16 Q. B. 19, 28.

(*z*) *Steward v. Greaves*, 10 M. & W. 711; *Chapman v. Milvain*, 5 Ex. 61.

(*a*) *Re London and Eastern Banking Corporation*, 2 De G. & J. 484, 498.

(*b*) *Beech v. Eyre*, 5 M. & G. 415.

(*c*) *Roles v. Rosewell*, 5 T. R. 538; *Hardy v. Bern*, 5 T. R. 636; *Drage v. Brand*, 2 Wils. 377.

(*d*) *De Beauvoir v. Welch*, 7 B. & C. at p. 278.

for two justices to summon the overseer before a special sessions, and, "if the justices at such sessions shall think fit," to issue a warrant for recovering the amount of the contribution, it was held that these words did not give the justices an absolute discretion, and that, if the facts of the case were within the statute, they were bound to issue their warrant (e). So, where the 11 & 12 Vict. c. 42, provided that, upon an information being laid before justices, "they may, if they shall think fit," issue a summons, it was held that they were bound to act according to law, and could not refuse to issue their summons merely because they thought the information ought not to have been laid (f). Where an Act provided that a City Council might, "if it believed that the public good and the best interests of the city required it," levy a tax to pay its funded debt, it was held that a *mandamus* lay at the instance of a judgment creditor to compel such a tax to be levied. "The discretion thus given cannot, consistently with the rules of law, be resolved in the negative. The rights of the creditor and the ends of justice demand that it should be exercised in favour of affirmative action" (g). The same decision was pronounced in the case of a statute under which the Board of Supervisors might, "if deemed advisable," levy a special tax, and the Court in giving judgment used the following expressions:—"The conclusion to be derived from the authorities is, that where power is given

(e) *R. v. Boteler*, 4 B. & S. 959.

(f) *R. v. Adamson*, L. R. 1 Q. B. D. 201.

(g) *City of Galena v. Amy*, 5 Wallace, 705, 709.

to public officers in the language of the Act before us, or in equivalent language, wherever the public interest or individual rights call for its exercise, the language used, though permissive in form, is in effect peremptory. What they are empowered to do for a third person the law requires shall be done. The power is given, not for their benefit, but for his. It is placed with the depositary to meet the demands of right, and to prevent a failure of justice. It is given as a remedy to those entitled to invoke its aid, and who would otherwise be remediless. In all such cases it is held that the intent of the Legislature, which is the test, was not to devolve a mere discretion, but to impose a positive and absolute duty" (*h*).

How far the very wide expressions used in this and some of the former cases are consistent with the views which have at other times been entertained may, perhaps, be determined by a reference to the cases where similar words have retained their primary meaning. Even where Courts, public officers or public bodies, have been empowered to do things which were for the public benefit, or for the benefit of specified persons, it has been held that the words conferring the power did not create a duty. The provisions of the 43 Geo. III. c. 59, that where county bridges are narrow and inconvenient, "it shall and may be lawful" for the justices of the county to order such bridges to be widened, improved and made commodious, were declared not to be imperative, though they were

Cases in which words of permission have been held not to be imperative.

(*h*) *Supervisors v. U. S.*, 4 Wallace, Sup. Ct. at pp. 446, 447.

obviously intended to benefit the public (*i*). "The words, 'it shall and may be lawful,'" says Blackburn, J., in that case (*k*), "are to be taken in their primary sense as permissive, unless there be anything in the subject-matter of the enactment requiring that they should receive a different construction." The 1 Will. IV. c. 22, gives power to the Courts of Law, by the words "it shall be lawful," to issue commissions for the examination of witnesses out of the jurisdiction. It is clear that this provision is intended for the benefit of suitors, yet it was held that the words were not compulsory, and that the Court in its discretion might refuse to issue such a commission (*l*). The 32 & 33 Vict. c. 40, enacts that the rating authority "may" exempt Sunday and ragged schools from liability to be rated. It was held that the rating authority was not bound to grant this exemption (*m*).

A serious conflict arose upon the construction of the Church Discipline Act, 3 & 4 Vict. c. 86. That Act provides, that "in every case of any clerk in holy orders who may be charged with any offence, it shall be lawful for the bishop of the diocese, on the application of any party complaining thereof, or, if he shall think fit, of his own mere motion, to issue a commission" of inquiry. It was laid down by Wightman, J. (*n*), by Sir Robert Phillimore (*o*),

(*i*) *Re Newport Bridge*, 2 E. & E. 377; 29 L. J. M. C. 52.

(*k*) 2 E. & E. at p. 382.

(*l*) *Castelli v. Groom*, 18 Q. B. 490.

(*m*) *Bell v. Crane*, L. R. 8 Q. B. 481.

(*n*) *R. v. Bp. of Chichester*, 2 E. & E. 209; 29 L. J. Q. B. 23.

(*o*) *Martin v. Mackonochie*, L. R. 2 A. & E. at p. 123; see also *Elphinstone v. Purchas*, L. R. 3 P. C. 245.

and by Lord Selborne (*p*), that these words were not imperative, and that the bishop had a discretionary power to issue the commission. On the other hand, Dr. Lushington, when he was acting as assessor to the Archbishop of Canterbury (*q*), stated that the bishop was bound to issue the commission; and the same view was taken by the Queen's Bench Division (*r*). But this judgment was reversed by the Court of Appeal, which held that the words "it shall be lawful" in the Church Discipline Act were not imperative (*s*), and the judgment of the Court of Appeal was affirmed by the House of Lords (*t*).

Where an Act recited that the formation of a railway between certain places would be beneficial to the public, and enacted that it should be lawful for a company to make such a railway, it was held that, notwithstanding the recital of the public benefit, the words were permissive and not compulsory (*u*). So, where it was provided in the United States that the directors of a turnpike company might remove a certain toll-gate (*x*), that the capital stock of a bank might consist of a certain sum (*y*), it was held that these Acts were not

(*p*) *Ex parte Edwards*, L. R. 9 Ch. 138.

(*q*) In *Ditcher v. Denison*, of which I can find no report at this stage.

(*r*) *R. v. Bishop of Oxford*, L. R. 4 Q. B. D. 245.

(*s*) *R. v. Bishop of Oxford*, L. R. 4 Q. B. D. 525.

(*t*) *Julius v. Bishop of Oxford*, L. R. 5 App. Ca. 214.

(*u*) *R. v. York and North Midland Rail. Co.*, 1 E. & B. 178, 858; *R. v. Lancashire and Yorkshire Rail. Co.*, 1 E. & B. 228, 873; *R. v. Great Western Rail. Co.*, 1 E. & B. 253, 874.

(*x*) *Newburgh Turnpike Co. v. Miller*, 5 Johnson's Chancery Reports, 101.

(*y*) *Minors v. Mechanics' Bank of Alexandria*, 1 Peters, 46.

imperative. In the judgment of the Supreme Court in the last of these cases, which is delivered by Story, J. (2), it is said, "the argument of the defendants is, that 'may,' in this section, means 'must,' and reliance is placed upon a well-known rule in the construction of public statutes where the word 'may' is often construed as imperative. Without question such a construction is proper in all cases where the Legislature means to impose a positive and absolute duty, and not merely to give a discretionary power. But no general rule can be laid down upon this subject, further than that the exposition ought to be adopted in this as in other cases which carries into effect the true intent and object of the Legislature in the enactment. The ordinary meaning of the language must be presumed to be intended, unless it would manifestly defeat the object of the provisions."

The use of words that are plainly compulsory in the same sentence with words the primary meaning of which is permissive, necessarily leads to an inference that the primary meaning is to be retained. Thus it is provided by the 18 & 19 Vict. c. 128, that "every vacancy in any Burial Board shall be filled up by the vestry within one month, and in case any such vestry shall neglect to fill up any such vacancy, the vacancy *may* be filled up by the Burial Board at any meeting thereof." It was held that the word "may" in this section was not imperative; "it would be a strong thing to read it as 'shall' when both the words occur in the

(2) 1 Peters, at p. 64.

same section" (a). So the Attorneys and Solicitors' Act (6 & 7 Vict. c. 73) enacts that upon the application of a party chargeable the Court or judge is required to refer any bill to taxation, and adds that "it shall be lawful" for Courts and judges to order the delivery up of documents in the solicitor's possession. It was held that, although as a general rule the words "it shall be lawful" were imperative, yet as they occurred in the same section with the words "the judges are hereby required," they gave the Court or judge a discretion (b).

Where the language of statutes is considered imperative, their provisions must be literally followed and obeyed implicitly. But where their language is regarded as directory a substantial compliance is sufficient (c), and even if acts are done which are not in accordance with the terms of the statute they are not rendered invalid. "The distinction between directory and imperative statutes," says Taunton, J., "has been long known. An early instance in which it was taken is the case in *Strange* as to the time of choosing overseers. I understand the distinction to be that a clause is directory where the provisions contain mere matter of direction, and nothing more; but not so when they are followed by such words as are used here, viz., that anything done contrary to such provisions shall be null and void to all intents. These words give a direct, positive, and absolute prohibition,

Effect of
regarding
language
as direc-
tory.

(a) *R. v. Overseers of South Weald*, 5 B. & S. 391; and *per Cockburn*, C.J., at p. 405.

(b) *Ex parte Jarman*, L. R. 4 Ch. D. at p. 838, *per Jessel*, M.R.

(c) *Woodward v. Sarsons*, L. R. 10 C. P. at p. 746.

which cannot be dispensed with" (*d*). In another case the Court gives the following definition of directory language, and states what is the result of its employment: "Where in such a matter as a rate the Legislature requires a thing to be done not in itself essential to the validity of it, and does not in terms specify what shall be the consequence of non-compliance, the Court will not make that consequence to be an avoidance of the whole" (*e*).

It is contended by Mr. Sedgwick that "where the mandate of a statute is called and regarded as directory, the legislative enactment is neither strictly nor liberally construed, but simply disregarded altogether" (*f*). This, however, is an exaggerated statement of the course pursued by the judges in their treatment of statutes which use words of command, but do not state the consequences of disobedience. They have held that where a statute provides for an act to be done within a certain time or in a certain manner, without forbidding it to be done within another time or in another manner, the conditions prescribed are not generally essential to the validity of the act. They have said that language seemingly positive may be read as directory, though such a construction ought not to be lightly adopted (*g*). Thus they have endeavoured to give effect to the true spirit and meaning of every statute without making its incidental provisions unduly oppressive.

(*d*) *Pearse v. Morrice*, 2 A. & E. at p. 96.

(*e*) *Le Feuvre v. Miller*, 8 E. & B. at p. 332.

(*f*) Interpretation and Application of Statutory and Constitutional Law, p. 368.

(*g*) *Bowman v. Blyth*, 7 E. & B. at p. 48, *per* Martin, B.

The chief instances of statutes being considered directory are those in which a certain time has been allowed for the performance of some act. It was held that the time fixed for the appointment of overseers (*h*), for the election of guardians (*i*), for the appointment of surveyors of highways (*k*), for holding quarter sessions (*l*), for revising the burgess lists of municipal boroughs (*m*), for depositing the valuation list made in London and transmitting it to the Assessment Committee (*n*), for delivering to the Commissioner of Stamps a return of the names and places of abode of the partners in a banking company (*o*), for entering with the registrar of a County Court a magistrate's order for the protection of the property of a married woman who was deserted by her husband (*p*), for selling by auction the real estate of a bankrupt (*q*), was not essential to the validity of any of those acts. Where it was provided by the 7 & 8 Geo. IV. c. 30, that every justice of the peace before whom any person was convicted of an offence under that Act should transmit the conviction to the next Court of Quarter Sessions, this provision was held directory, and it was decided that a conviction might be returned to a subsequent sessions (*r*).

Where statutes fix a time within which acts are to be done.

- (*h*) *R. v. Sparrow*, 2 Strange, 1123.
- (*i*) *R. v. Mayor of Norwich*, 1 B. & Ad. 310.
- (*k*) *R. v. Denbighshire*, 4 East, 142.
- (*l*) *R. v. Justices of Leicester*, 7 B. & C. 6.
- (*m*) *R. v. Mayor of Rochester*, 7 E. & B. 910.
- (*n*) *R. v. Ingall*, L. R. 2 Q. B. D. 199.
- (*o*) *Bosanquet v. Woodford*, 5 Q. B. 310.
- (*p*) *In the goods of Farraday*, 31 L. J. P. & M. 7.
- (*q*) *Doe d. Phillips v. Evans*, 1 Cr. & M. 450.
- (*r*) *Charter v. Greame*, 13 Q. B. 216.

In the United States it was held that an Act directing a tax to be assessed within thirty days of the date of the meeting at which it was voted (*s*), and another ordering the commanding officer of each brigade of infantry to appoint a brigade court martial on or before the 1st of June in each year (*t*), were directory, and that the tax could be assessed and the court martial appointed after the time specified. In the last of these cases Marcy, J., says: "The general rule is that where a statute specifies the time within which a public officer is to perform an official act regarding the rights and duties of others, it will be considered as directory merely, unless the nature of the act to be performed or the language used by the Legislature show that the designation of the time was intended as a limitation of the power of the officer." Such an inference as is suggested in the last lines of the passage just quoted was drawn by the Court where a time was appointed for the taxation of costs upon petitions against private bills (*u*), and for the approval by the quarter sessions of the table of fees to be taken by clerks to justices (*x*). In both these cases the provision as to time was held to be imperative, and non-compliance with it rendered the taxation of costs and the table of fees invalid.

The contrast between such provisions with regard to the time of doing acts as are directory

(*s*) *Gale v. Mead*, 2 Denio, 160; *Pond v. Negus*, 3 Mass. 230.

(*t*) *People v. Allen*, 6 Wendell, 486.

(*u*) *Williams v. Swansea Canal Navigation Co.*, L. R. 3 Ex. 158.

(*x*) *Bowman v. Blyth*, 7 E. & B. 26.

and such as are imperative, is clearly defined in two cases decided upon the Ecclesiastical Dilapidations Act, 1871 (34 & 35 Vict. c. 43), and the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85). The first of these Acts provided that within three calendar months after the avoidance of a benefice the bishop should direct a surveyor to inspect and report on the amount of dilapidations. It was held that the words limiting the time were directory, as great inconvenience might ensue and great injustice be done if the outgoing incumbent escaped liability, and his successor was deprived of any remedy, because the bishop allowed one day more than three months to elapse before he gave directions to the surveyor (*y*). But when the second Act required the bishop, within twenty-one days after a complaint was made to him of any illegal acts, to transmit a copy of such complaint to the accused person, it was held that these words were imperative, as it was unjust to the person accused that a suit should be kept hanging over him for an indefinite time (*z*).

A similar construction is placed upon statutes which provide that things shall be done in a certain manner. Such a provision is usually considered directory unless the Legislature has used negative words, or other words showing an intention to treat the manner of performance as essential to the validity of the act, or unless the statute confers a special authority which must be strictly followed. Where it was enacted by the 5 Geo. IV. c. 84,

Where statutes prescribe the manner in which acts are to be done.

(*y*) *Caldow v. Pixell*, L. R. 2 C. P. D. 562.

(*z*) *Howard v. Bodington*, L. R. 2 P. D. 203.

that it should be lawful for the Crown to appoint places of confinement in England for convicts under sentence of transportation, it was held that these words were directory, and that the return to a *habeas corpus* need not state that Millbank had been duly appointed one of such places of confinement (a). The Act 19 & 20 Vict. c. 120, which provides that a married woman applying to the Court shall be examined apart from her husband, was held to be directory, and in two cases judges dispensed with that examination (b). In like manner the Acts which require certain questions to be put to a recruit on his enlisting (c), bonds to be made to the King, his heirs or executors (d), lists of voters to be signed by the overseers who prepared them (e), the address of appellant and respondent to be indorsed on the case stated by an assistant barrister (f), have been considered directory. The same construction has been placed on the Acts which provide that an order for the detention of a lunatic should be in a certain form and should state certain particulars (g), that the justices at quarter sessions might appoint a county treasurer upon his giving sufficient security (h), that contracts might be made by Local Boards

(a) *Brenan's Case*, 10 Q. B. 492.

(b) *Re Lord de Tabley's Settled Estates*, 11 W. R. 936 ; *Re Halliday's Settled Estates*, L. R. 12 Eq. 199.

(c) *Wolton v. Gavin*, 16 Q. B. 48.

(d) *Yale v. The King*, 6 Brown P. C. 27, 30.

(e) *Morgan v. Parry*, 17 C. B. 334.

(f) *M'Keowne v. Bradford*, 7 Ir. Jur. N. S. 169.

(g) *Shuttleworth's Case*, 9 Q. B. 651.

(h) *R. v. Patteson*, 4 B. & Ad. 9.

upon their obtaining an estimate in writing of the expense and a report as to the most advantageous mode of contracting (*i*), that contracts made by the commissioners appointed under a local Act should be signed by three commissioners and copied in a book kept for that purpose (*k*), that the business of a company should be carried on by twelve directors (*l*), and that the names and addresses of shareholders in a company should be entered in a book which was to be *prima facie* evidence of proprietorship (*m*).

Another instance in which the operation of statutes has been restrained is analogous to the cases where their language has been regarded as directory. In some statutes words of prohibition are modified, and things declared void by the Legislature are held by the Courts to be valid for certain purposes. The Act 5 Eliz. c. 4, provided that apprentices should be bound for seven years at the least, and that all indentures made otherwise than the Act provided, should be void to all intents and purposes. Yet it was held that such indentures were merely voidable as between the parties, and that a valid settlement might be gained under a binding for four years (*n*). The same con-

Operation of statutes restrained where words of prohibition are modified.

(*i*) *Nowell v. Mayor of Worcester*, 9 Ex. 457. See as to provisions with regard to Local Boards which have been considered imperative, *Frend v. Dennett*, 4 C. B. N. S. 576; *R. v. Worksop Local Board*, 5 B. & S. 95.

(*k*) *Cole v. Green*, 6 M. & G. 872.

(*l*) *Thames Haven Dock Co. v. Rose*, 4 M. & G. 552.

(*m*) *Southampton Dock Co. v. Richards*, 1 M. & G. 448; *London Grand Junction Rail. Co. v. Freeman*, 2 M. & G. 606.

(*n*) *R. v. St. Nicholas, Ipswich*, Burr. Settlement Cases, 91.

struction was put upon the 43 Eliz. c. 2, which enacted that male apprentices should be bound till the age of twenty-four (*o*), and on a local Act giving guardians power to bind children as apprentices, but containing a *proviso* that the children should not be bound for a longer term than one specified (*p*). Again, where the 53 Geo. III. c. 41, enacted that a deed, of which no memorial had been enrolled, should be void, it was held that such a deed was merely voidable (*q*). On similar grounds it was decided that where the 8 & 9 Vict. c. 106, declared that a lease which was required to be in writing should be void at law unless it was made by deed, the lease was merely void as a lease and might be valid as an agreement (*r*). Thus, too, a deed which is not to be received in evidence unless it is stamped, may be given in evidence to prove an act of bankruptcy, though it is not receivable as a valid deed (*s*); an unstamped cheque may be given in evidence for the purpose of proving that a transaction was fraudulent (*t*), and an unstamped bill of exchange upon a charge of forgery (*u*), or to negative a plea of payment (*x*).

(*o*) *R. v. Woolstanton*, 1 Bott. & Const. 707.

(*p*) *R. v. St. Gregory*, 2 A. & E. 99.

(*q*) *Davis v. Bryan*, 6 B. & C. 651.

(*r*) *Bond v. Rosling*, 1 B. & S. 371; *Tidey v. Mollett*, 16 C. B. N. S. 298; *Parker v. Taswell*, 2 De G. & J. 559, 570.

(*s*) *Ponsford v. Walton*, L. R. 3 C. P. 167; *Ex parte Squire*, L. R. 4 Ch. 47.

(*t*) *Keable v. Payme*, 8 A. & E. 555.

(*u*) *R. v. Hawkeswood*, 1 Leach, 257; 2 East P. C. 955.

(*x*) *Smart v. Nokes*, 6 M. & G. 911.

CHAPTER V.

THE VARIOUS KINDS OF STATUTES.

ALTHOUGH the general principles of construction which have been already discussed, apply to all statutes, yet there are some particular principles of construction affecting the various kinds or classes into which statutes may be divided. Among these kinds or classes those which present a marked contrast to each other are ancient and modern, general and special, affirmative and negative, declaratory and enacting, remedial and penal statutes. In addition to these there are temporary Acts, and Acts *in pari materiâ*, and each of these divisions presents some characteristic features.

What are
the various
kinds of
statutes.

ANCIENT AND MODERN STATUTES.

“The first division of statutes,” says Sir F. Dwaris, “is obviously into Ancient and Modern” (a). Ancient statutes, according to the same writer, are such as extend from Magna Charta to the end of the reign of Edward the Second, while all statutes passed in subsequent

(a) *Dwaris on Statutes*, 2nd edit. p. 460.

reigns are modern. Such a division of statutes, however, is purely arbitrary, and for practical purposes is of little or no value. There can be no real distinction at the present day between a statute passed in the last year of Edward the Second and another passed in the first year of Edward the Third, while there are many and striking distinctions between statutes passed in both those reigns and statutes passed within living memory. With each century, with each reign, almost with each year, some statutes, which before then had been intelligible and full of meaning, drop out of the practical life of the nation and become obsolete both in sense and language. Without any actual repeal they are virtually superseded; if put in force at all, they are put in force with reluctance; and the modern statutes of one age become the ancient statutes of the next.

Greater latitude allowed in construing ancient statutes.

While, therefore, it is unsafe to fix upon any definite period as the dividing line between ancient and modern statutes, we may notice that much greater latitude is allowed in the construction of the former. As many of the ancient statutes were passed at a time when no great precision of language prevailed (*b*), and as it was "the wisdom of ancient Parliaments to comprehend much matter in few words" (*c*), the meaning of words used in those statutes has been often extended. "The extreme conciseness of the ancient statutes," says Lord Brougham, "was the only ground for the sort of

(*b*) *Wilson v. Knubley*, 7 East, at p. 134, per Lord Ellenborough, C.J.

(*c*) 2 Inst. 401.

legislative interpretation frequently put upon their words by the judges. The prolixity of modern statutes, so very remarkable of late, affords no ground to justify such a sort of interpretation" (*d*). Similar language is used by Coleridge, J. : "There is a well known distinction between old and modern Acts. The older statutes are short, and it is sometimes necessary to give their words an extended signification ; but this is not so with recent Acts in which many words are used and in the sense which is common at this day" (*e*). Lord Abinger has also remarked more than once that the old Acts were short and were intended to be applied to a variety of cases, while the statutes of his day were framed with all the beauties of style and rhetorical expressions which could be picked up in the chambers of special pleaders and conveyancers, and provided in terms for every case that could suggest itself to the imagination of the draftsman (*f*).

The usual method in which the language of ancient statutes is extended consists in the treatment of particular words as if they were put for examples. Thus the statute *Circumspecte agatis* (13 Edw. I.) directs the judges to use themselves circumspectly in all matters concerning the Bishop of Norwich and his clergy, "not punishing them if they hold plea in Court Christian of such things as be meer spiritual." It was held that the Bishop of Norwich was put for an example, and that the Act extended

Words
used for
examples.

(*d*) *Gwynne v. Burnell*, 7 Cl. & Fin. at p. 696.

(*e*) *R. v. Gardner*, 6 A. & E. at p. 118.

(*f*) *Patrick v. Stubbs*, 9 M. & W. at p. 836 ; *R. v. Frost*, 9 C. & P. at p. 186.

to all bishops (*g*). The same view was taken of the provisions of Westminster the Second (13 Edw. I. stat. 1, c. 46), which enumerated windmills, sheep cotes, cow-houses, and curtilages (*h*). In the 31st chapter of the same statute the judges of the Common Pleas were named, and it was held that all other judges, inferior as well as superior, were included (*i*). So, too, in Westminster the First (3 Edw. I. c. 46), the judges of the King's Bench at Westminster were put by way of example for the purpose of describing all Courts of justice (*k*). In the 4th chapter of the same statute the words "man, dog, or cat" include all animals escaping alive from a wreck (*l*). Again, the 1 Rich. II. c. 12, which gives an action for an escape, mentions the warden of the Fleet, but extends to all gaolers (*m*). In the statute of Gloucester (6 Edw. I. c. 8) the County Court is named for example, but hundred Courts and Courts Baron are also within the law (*n*), and in chap. 11 London is named for excel-

(*g*) 2 Inst. 487. Mr. Lowe, in his evidence before the Select Committee on Acts of Parliament, 1875, said: "If the case of the Bishop of Norwich were to occur again, it never would be decided by the present Courts that because a single bishop was allowed to make a lease, therefore all bishops are allowed to do so." It will be seen that the statute does not refer to leases; and it is difficult to understand why one bishop only should be allowed to decide spiritual questions in his Court.

(*h*) 3 Inst. 476.

(*i*) 2 Inst. 427; *Strother v. Hutchinson*, 4 Bing. N. C. 83.

(*k*) 2 Inst. 256.

(*l*) 2 Inst. 167.

(*m*) *Platt v. Sheriffs of London*, Plow. 35; *Plummer v. Whichcot*, T. Jones, 62.

(*n*) 2 Inst. 311.

lency, but the Act extends to all cities and boroughs which have the same privileges (*o*).

All these instances are drawn from very old statutes, and an attempt to apply the same principle to the 24th Geo II. c. 44, was unsuccessful. Lord Camden, C.J., in giving the judgment of the Court, uses these words: "Though the general rule be true enough that, where it is clear the person or thing expressed is put by way of example, the judges must fill up the catalogue; yet we ought to be sure from the words and meaning of the Act itself that the thing or person is really inserted as an example. This is a very inaccurate way of penning a law; and the instances of this sort are scarce ever to be found except in some of the old Acts of Parliament. And wherever this rule is to take place the Act must be general, and the thing expressed must be particular; such as those cases of the warden of the Fleet and the Bishop of Norwich; whereas the Act before us is equally general in all its parts, and requires no addition or supply to give it the full effect" (*p*). Perhaps the only instance of a word in a modern Act of Parliament being used for an example is to be found in the case where the words "King George," in the form of oath taken by members of the House of Commons, were declared to be applicable to the existing sovereign (*q*).

(*o*) 2 Inst. 322.

(*p*) *Entick v. Carrington*, 19 State Trials, at p. 1060.

(*q*) *Miller v. Salomons*, 7 Ex. 475; 8 Ex. 778. In that case, 7 Ex. at p. 559, Pollock, C.B., referring to the Bishop of Norwich's case, says that such a construction would not be tolerated in modern times.

GENERAL AND SPECIAL STATUTES.

Statutes may next be divided into such as are general and such as are special. General Acts affect either the whole community, or large and important sections, the interests of which may be considered identical with those of the whole body. Special Acts include those which are called private, local or personal, as they relate to private interests, and deal with the affairs of persons, places, classes, or other bodies which are not of a public character.

The terms general and special, of which Lord Coke says, “*generale dicitur a genere, et speciale a specie*—spirituality is genus, bishopric, deanery, &c., are species” (r), appear to be more appropriate and more comprehensive than the terms public and private which are sometimes used to convey the same meaning. There is, moreover, a certain amount of ambiguity in the terms public and private as applied to statutes. These words have sometimes been used as if they were equivalent to the terms general and special; but at other times they have been employed in a narrower sense with reference to the manner in which statutes were classified for the purpose of enrolment or printing. It is said by the Record Commissioners that “in the 31st year of Hen. VIII. the distinction between Public Acts and Private Acts is for the first time specifically stated on the Inrollment in Chancery” (s). According to Sir Erskine May, statutes began to

Public and
private
statutes.

(r) *Holland's Case*, 4 Rep. 76.

(s) Introduction to the Statutes of the Realm, 1810, p. xxxiii.

be divided into Public and General and Local and Personal in 1798 (t). "On the 1st of May, 1797," says Parke, B., delivering the judgment of the Court of Exchequer, "the House of Lords resolved that the King's printer should class the general statutes and special, the public local, and private, in separate volumes; and on the 8th of May, 1801, there was a resolution of the House of Commons, agreed to by the House of Lords, that the general statutes, and the 'public local and personal' in each session, should be classed in separate volumes" (u).

This classification of statutes was important, as it affected the mode in which they were treated by the Courts. Public Acts were judicially noticed, and copies printed by the authorised printer were received as conclusive evidence (x). Private Acts, however, had to be proved by examined copies, and with a view of remedying the inconvenience thus caused, a clause was often inserted in private Acts declaring them to be public. Subsequently the 13 & 14 Vict. c. 21, s. 7, enacted that "every Act made after the commencement of this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act." But the effect of this provision, as of the similar clauses in private Acts of earlier date, was simply to indicate the way in which such Acts were to be noticed by the Court, and their operation is

(t) Evidence before Select Committee of 1875 on Acts of Parliament.

(u) *Richards v Easto*, 15 M. & W. at p. 251.

(x) 41 Geo. III. c. 90, s. 9.

in no way affected by it (*y*). Acts which are local and personal in their nature are not removed from that category by a clause declaring them to be public (*z*). "Whether an Act is public or private does not depend upon any technical considerations, (such as having a clause or declaration that the Act shall be deemed a public Act), but upon the nature and substance of the case" (*a*). Thus, though the formal distinction between public and private Acts has been taken away, the substantial distinction between general and special Acts still remains.

Real distinction between general and special statutes.

The broad distinction between general and special statutes is that everybody is considered as assenting to the former (*b*), and they consequently bind the whole community, while the latter, as a rule, bind only those who are parties to them, or are interested in their subject-matter, unless it appears by express words or necessary implication that it was the intention of the Legislature to affect the rights of strangers (*c*).

What are general statutes.

It will be well in the first instance to consider what Acts have been included in these two classes. Statutes relating to the sovereign (*d*), or heir

(*y*) *R. v. Hicks*, 4 E. & B. at p. 643; *Beaumont v. Mountain*, 10 Bing. 404; *Woodward v. Cotton*, 1 C. M. & R. 44; *Brett v. Beales*, M. & M. 421.

(*z*) *Richards v. Easto*, 15 M. & W. 244; *Moore v. Shepherd*, 10 Ex. 424; *Shepherd v. Sharp*, 1 H. & N. 115. See, however, *Barnett v. Cox*, 9 Q. B. 617.

(*a*) *Dawson v. Paver*, 5 Hare, at p. 434, per Wigram, V.-C.

(*b*) *Hornby v. Houlditch*, 1 T. R. at p. 93, per Lord Hardwicke, C.J.

(*c*) *Dawson v. Paver*, 5 Hare, at p. 434, per Wigram, V.-C.

(*d*) *R. v. Buggs*, *Skinner*, at p. 429.

apparent (*e*), the whole spirituality, or all those who have any spiritual or ecclesiastical benefice (*f*), all sheriffs and other officers (*g*), the election of members of Parliament, though for one borough only (*h*), the relief of the poor, though only in one county (*i*), the relief of insolvent debtors (*k*), have been considered general. In one case it was held that an Act relating to all trades was general, while, if it related to one trade only, it was special (*l*); but it has also been laid down that an Act concerning tanners and shoemakers was general (*m*). The Watching and Lighting Act, 3 & 4 Will. IV. c. 90 (*n*), and the Acts relating to the Metropolitan Police (*o*), were regarded as general, and in the United States, the same effect was given to statutes affecting banks, as their bills were made a legal tender, and their charters concerned the currency of the country (*p*).

On the other hand, it has been held that statutes referring to leases made by bishops, to the nobility or the Lords of Parliament, or the corporations created by one King (*q*), or extending only to

What are
special
statutes.

(*e*) *The Prince's Case*, 8 Rep. 28 a.

(*f*) *Holland's Case*, 4 Rep. 76; *Jennings v. Haithwait*, 1 Brownlow, 208.

(*g*) *Holland's Case*, 4 Rep. 76; 2 Inst. 31.

(*h*) *Morris v. Hunt*, 1 Chit. 453.

(*i*) *R. v. Pawlyn*, 1 Sid. 208.

(*k*) *Jones v. Azen*, 1 Ld. Raym. 119.

(*l*) *Kirk v. Nowell*, 1 T. R. 125.

(*m*) *Jaques v. Chandler*, Lutw. 1410.

(*n*) *Pilkington v. Riley*, 3 Ex. 739.

(*o*) *Barnett v. Cox*, 9 Q. B. 617.

(*p*) *Bank of Utica v. Smedes*, 3 Cowen, 662.

(*q*) *Holland's Case*, 4 Rep. 76.

Cambridge, Oxford, Winchester and Eton (*r*), were special. If, however, the words of an Act are special while its object is general, a general effect must be given to it, as was the case when the 5 Hen. IV. c. 10, providing that none be imprisoned by any justice of the peace but in the common gaol for trial at the next gaol delivery or sessions of the peace, was extended to all other judges (*s*).

Acts
giving
powers to
companies.

Acts which have been passed at the instance of companies, or their promoters, for the purpose of enabling them to execute works, levy tolls, or interfere with private property, are special Acts, and have always been looked upon as contracts between the persons obtaining such Acts and the public (*t*). In such Acts, it has been said, the Legislature merely lends its aid to the agreement of the parties in order to render it effectual when any public reason stands in the way (*u*). Such Acts are to be construed strictly against the persons obtaining them, but liberally in favour of the public (*x*), and as the language used in the Acts is considered the language of the promoters, any ambiguity which occurs in it must operate against

(*r*) *Carter and Claycole's Case*, 1 Leonard, 306.

(*s*) 2 Inst. 43, citing the maxim, *ubi lex est specialis et ratio ejus generalis, generaliter accipienda est*.

(*t*) *Blakemore v. Glamorganshire Canal Co.*, 1 Myl. & K. 162, per Lord Eldon, C. ; 2 C. M. & R. at p. 141, per Parke, B.

(*u*) *R. v. Toms*, 1 Dougl. at p. 406, per Lord Mansfield, C.J.

(*x*) *Priestley v. Foulds*, 2 M. & G. at p. 194 ; *Barrett v. Stockton and Darlington Rail. Co.*, 2 M. & G. 134 ; 3 M. & G. 956 ; 11 Cl. & Fin. 590 ; *Parker v. G. W. Rail. Co.*, 7 M. & G. at p. 288 ; *Walker v. London and Blackwall Rail. Co.*, 3 Q. B. 744 ; *Webb v. Manchester and Leeds Rail. Co.*, 4 Myl. & Cr. 116 ; *Tawney v. Lynn and Ely Rail. Co.*, 16 L. J. Ch. 282.

them (*y*). The powers given by such Acts to levy rates or tolls (*z*), or to interfere with private property, must be conferred by clear words, and "extend no farther than is expressly stated in the Act, or is necessarily and properly required for carrying into effect the undertaking and works which the Act has expressly sanctioned" (*a*). An instance of the strict construction given to special Acts passed for the benefit of companies may be found in a case decided upon a statute which empowered the Norwich Union Society to sue and be sued, and to commence all actions and suits in the name of its secretary. It was held that this provision did not authorise the secretary to present a bankruptcy petition against a person who was indebted to the society (*b*).

In some of the early cases it was declared that a special Act did not take away the rights or interests of strangers. Thus, an Act which was in effect a bargain between foresters and proprietors of the soil did not affect the rights of commoners (*c*). On similar grounds it has been lately held that an Act passed for the purpose of collecting together the clauses usually inserted in private bills which authorised the construction of piers and docks, could not be understood as creating a new

How far
special
Acts affect
strangers.

(*y*) *Stourbridge Canal Co. v. Wheeley*, 2 B. & Ad. 792.

(*z*) *Hull Dock Co. v. Browne*, 2 B. & Ad. at pp. 58, 59, *per* Lord Tenterden, C.J.

(*a*) *Colman v. E. C. Rail. Co.*, 10 Beav. at p. 14, *per* Lord Langdale, M.R.

(*b*) *Guthrie v. Fisk*, 3 B. & C. 178.

(*c*) *Barrington's Case*, 8 Rep. at p. 138 a; *Lucy v. Levinington*, 1 Ventr. at p. 176, *per* Lord Hale.

and extensive liability beyond the liability imposed by the Common Law (*d*). But where the language used in a special Act is not capable of a narrower construction than one which would take away the rights of strangers, or would create a new liability, that effect must be given to it. Thus, where a local and personal Act recited that letters patent had been granted to the plaintiff upon certain conditions, and confirmed the grant, although some of the conditions had not been duly performed, it was held that this confirmation was effectual against all the world, and that it rendered invalid a patent for a similar invention, which had been granted to the defendant between the time of the plaintiff's grant and its confirmation (*e*). "The Legislature," says Byles, J., "in passing a private Act, is as omnipotent as in passing a public Act; and if the words of the Act do clearly and inevitably comprehend the estates or rights of strangers, a Court of law must hold those estates or rights of strangers bound" (*f*). Again, a special Act affects the rights of those interested in its subject-matter, although it may have passed without their receiving due notice of its introduction (*g*), and persons dealing with a company incorporated by a special Act of Parliament are presumed to be acquainted with the provisions of that statute (*h*).

(*d*) *Wear Commissioners v. Adamson*, L. R. 2 App. Cas. 743.

(*e*) *Stead v. Carey*, 1 C. B. 496.

(*f*) *Earl of Shrewsbury v. Scott*, 6 C. B. N. S. at p. 219. See also the expressions of Cockburn, C.J., at pp. 157, 158, and of Pollock, C.B., at p. 222.

(*g*) *Edinburgh Rail. Co. v. Wauchope*, 8 Cl. & Fin. 710.

(*h*) *Cahill v. L. and N. W. Rail. Co.*, 10 C. B. N. S. 154; 30 L. J. C. P. 289.

AFFIRMATIVE AND NEGATIVE STATUTES.

Another classification which has been commonly adopted, but the accuracy of which has been questioned (*i*), consists in the division of Acts of Parliament into affirmative and negative statutes. Originally, no doubt, these terms were employed with reference to the language of the statutes themselves, and affirmative words were regarded as permissive, negative words as prohibitory. Acting on this principle, the older authorities laid it down that an affirmative Act did not take away a custom (*k*). The 11 Geo. IV. and 1 Will. IV. c. 64, which made it lawful for any person licensed as the Act provided, to sell beer by retail in any part of England, did not supersede the custom of a borough that no one but a burgess should keep an ale-house (*l*). Nor was a custom of the city of London for the mayor and aldermen, after any person whom they considered unfit to be an alderman had been chosen at three successive elections, to fill up the vacancy themselves, taken away by an Act which provided that the right of election should belong to the freemen of the city (*m*). It has also been laid down that an affirmative statute does not take away the Common Law (*n*), affect or abridge Common Law rights and privileges, such as the manner in which the panel of assize was arrayed (*o*), or the

Affirma-
tive Acts
do not
take away
a custom,

or alter
the Com-
mon Law.

(*i*) *R. v. Mayor of London*, 13 Q. B. at p. 33, *per* Alderson, B.

(*k*) Co. Litt. 115 a.

(*l*) *Mayor of Leicester v. Burgess*, 5 B. & Ad. 246.

(*m*) *R. v. Johnson*, 6 Cl. & Fin. 41.

(*n*) 2 Inst. 200; *Escott v. Mastin*, 4 Moo. P. C. at p. 131.

(*o*) Brooke's Abridgement, tit. Parliament, pl. 70.

power of the sheriff to take the *posse comitatus* for the purpose of serving process (*p*), or the right of a tenant in tail to cut timber (*q*), or interfere with an existing exemption, such as an immemorial exemption from serving on juries (*r*).

The distinction between affirmative and negative words which has thus been established prevails in more modern cases. The provision of the 3 & 4 Vict. c. 61, that an applicant for a licence for the sale of beer by retail should produce to the officer of excise a certificate that he was the real resident holder and occupier of the house for which he applied to be licensed, was held not to be imperative, while an opposite construction was placed on the negative words in the same Act, providing that no licence should be granted to one who was not a real resident holder (*s*). The 5 Vict. c. 27 (sess. 2), enabled incumbents to demise the lands belonging to their benefices on farming leases for fourteen years, reserving the rent quarterly, and complying with other special conditions. By the Common Law, as modified by 13 Eliz. c. 10, a parson or vicar might grant a lease of any part of his glebe for twenty-one years, or three lives, so long as the lease was confirmed by the patron of the living and the ordinary. It was held that this existing power of granting a lease for twenty-one years was not restrained by the affirmative words of the Act which enabled leases to be granted for fourteen

(*p*) Brooke's Abridgement, tit. Parlement, pl. 108.

(*q*) *Ex parte Clayton*, 1 Russ. & Myl. 369.

(*r*) *R. v. Pugh*, 1 Doug. 188.

(*s*) *Thompson v. Harvey*, 4 H. & N. 254.

years (t). Another case was decided upon the affirmative words of the Companies Clauses Act, 8 Vict. c. 16, the 97th section of which enacted that the power of directors to make contracts might lawfully be exercised in certain specified ways, and that all contracts so made should be effectual in law, and binding upon the company. It was held that an agreement which was not made according to the provisions of the Act might be specifically enforced by the Court of Chancery (u). “The Legislature,” said Turner, L.J., in that case (x), “has in this section pointed out modes in which the powers of directors to contract may lawfully be exercised, and has enacted that all contracts made according to those provisions shall be binding and effectual; but it has not said that contracts made in other modes shall not be binding and effectual where there is power so to make them.” We may contrast with this decision the effect given to negative words in the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, which provided that a list of the persons elected councillors of a borough should be published by the mayor “not later than two of the clock.” It was held that under these words a publication could not be made after two o’clock, even for the purpose of correcting an error (y).

(t) *Green v. Jenkins*, 1 De G., F. & J. 454.

(u) *Wilson v. West Hartlepool Rail. Co.*, 2 De G., J. & S. 475.

(x) At p. 496.

(y) *R. v. Mayor of Leeds*, 11 A. & E. 512.

DECLARATORY AND ENACTING STATUTES.

Although in all these cases the Courts attached the greatest weight to the language of the statutes, at other times they considered whether the Legislature intended to declare the existing law, or to replace it by a new enactment. In the former case the use of negative words was not imperative; in the latter, affirmative words were not merely permissive. It is stated in the older authorities that affirmative statutes which introduce a new law imply a negative to all that is not in the purview (*z*), and that the express designation of one person in such statutes is the exclusion of all others (*a*). Thus where an action founded on the Statute 34 & 35 Hen. VIII. was appointed by that Act to be returned before the justice of Glamorgan at his sessions, it was held that it could not be sued or returned elsewhere, or before any other. And where Statute 31 Edw. III. c. 12, provided that error in the Exchequer should be corrected and amended before the Chancellor and Treasurer, it could not be corrected before any other (*b*). In a modern case it was decided that where the words of an Act, though affirmative, were absolutely inconsistent with the continuance of a custom, the custom must yield to the statute (*c*). "A well-known passage from Lord Coke has been cited by Quain, J.," said

(*z*) *Slade v. Drake*, Hob. 298.

(*a*) *Foster's Case*, 11 Rep. at p. 64.

(*b*) *Stradling v. Morgan*, Plowd. at p. 206 a.

(*c*) *Green v. The Queen*, L. R. 1 App. Cas. 513.

Lord Hatherley in that case (*d*) ; “namely, that you are not to do away with existing special rights by affirmative words. But if the affirmative words are clear, plain, and precise, and the two things will not coexist or stand together, then I apprehend you are compelled to come to a construction which is a sensible construction in itself, and also a natural and ordinary construction. Finding that the two things will not stand together, you are compelled to adopt that construction which the plain sense of the words requires.”

Where, on the other hand, a statute is declaratory, neither negative words, nor words which in their primary sense would be considered compulsory, have been treated as imperative. Lord Coke says that a man may prescribe against a negative statute if it be in affirmance of the Common Law. “As the Statute of Magna Charta provideth that no leet shall be holden but twice in the year, yet a man may prescribe to hold it oftener and at other times, for that the statute was but in affirmance of the Common Law. So the Statute of 34 Edw. I. provideth that none shall cut down any trees of his own within a forest without the view of the forester, but inasmuch as this Act is in affirmance of the Common Law, a man may prescribe to cut down his woods within a forest without the view of the forester” (*e*). This proposition, however, is denied by Richardson, C.J. (*f*), and it certainly strikes at the root of the distinction between affirmative and

Declaratory Acts
are not imperative.

(*d*) At p. 546.

(*e*) Co. Litt. 115 ; see also 2 Inst. 28.

(*f*) *Lord Lovelace's Case*, Sir W. Jones, 270.

negative language, though, perhaps, it may be supported if the Acts referred to are considered merely declaratory. The use of the word "declare" has been sometimes accepted as conclusive evidence of the intention of the Legislature to expound the existing law instead of introducing any new principles (*g*). Thus the 7 & 8 Will. III., c. 25, provides that "all conveyances in order to multiply votes, or to split and divide the interest in any houses or lands among several persons to enable them to vote at elections, are hereby *declared* to be void and of none effect." It was held that these words did not enact a new law, but simply declared what the law was at the time when the Act was passed, and that as before the Act passed such a conveyance would not have been void unless it was fraudulent, and a conveyance made for good consideration, though with the express object of multiplying votes, would have been valid, the same principles applied after the passing of the statute (*h*).

REMEDIAL AND PENAL STATUTES.

Of all classifications of Acts of Parliament the most important is that by which they are divided into Remedial and Penal Statutes, or rather into such as are construed liberally and such as are construed strictly. Let us first consider what are the Acts that for this purpose are called remedial, and receive a liberal construction.

(*g*) *Twynne's Case*, 3 Rep. at p. 82 b ; 1 Sm. L. C. 6th edit. at p. 6.

(*h*) *Alexander v. Newman*, 2 C. B. 122 ; *Riley v. Crossley*, 2 C. B. 146.

Acts which are passed for the expedition of justice and for ousting delays in its administration (*i*), for the amendment of the law (*k*), for the protection of officers of justice in the discharge of their duty (*l*), are remedial Acts, and are to be extended as far as their words will admit to every case within their purview. Thus, in one of the Acts mentioned by Lord Coke as being a beneficial Act and intended to oust delays, the jurisdiction given to justices in eyre by name was extended to the Court of Common Pleas (*m*). So statutes which extend the franchise (*n*), which take away penalties (*o*), which give compensation to persons whose property is taken compulsorily or injuriously affected (*p*), which are in favour of agriculture (*q*), or contain provisions in advancement of trade (*r*), are to be liberally construed. The Apportionment Act, 4 & 5 Will. IV. c. 22, is a remedial Act (*s*). The Statute of Gloucester, giving costs, was held in one case to be remedial (*t*), and though elsewhere it was said that statutes giving costs were to be

(*i*) 2 Inst. 251, 325, 393.

(*k*) *Bearpark v. Hutchinson*, 7 Bing. at p. 186.

(*l*) *Cook v. Clark*, 10 Bing. at p. 21.

(*m*) 2 Inst. 393.

(*n*) *Thompson v. Ward*, L. R. 6 C. P. at p. 353, *per* Willes, J.

(*o*) *Evans v. Pratt*, 3 M. & G. at p. 767.

(*p*) *R. v. St. Luke's*, L. R. 7 Q. B. at p. 153, *per* Kelly, C.B.; *Re Lathropp's Charity*, L. R. 1 Eq. 467, 470.

(*q*) *Higginbotham v. Perkins*, 8 Taunt. 795, 801; *Clements v. Smith*, 3 E. & E. 238; *Harrison v. James*, 2 Chit. 457.

(*r*) *Milne v. Graham*, 1 B. & C. 192.

(*s*) *Llewellyn v. Rous*, L. R. 2 Eq. 27; *Heasman v. Pearse*, L. R. 8 Eq. 599.

(*t*) *Ward v. Snell*, 1 H. Bl. at p. 13.

construed strictly (*u*), this *dictum* has been since declared to be “hardly consistent with the principle upon which the Statute of Gloucester has been interpreted” (*v*). The Statutes of Limitations have also given rise to some conflict of opinion. It is said by Heath, J., that these statutes always receive a strict construction from the Courts (*y*), and the same view is taken by Mr. Sedgwick (*z*). On the other hand, Dallas, C.J., expresses himself thus with regard to the 21 Jac. I. c. 16 : “I cannot agree in the position that statutes of this description ought to receive a strict construction ; on the contrary, I think they ought to receive a beneficial construction with a view to the mischief intended to be remedied, and this is pointed out by the very first words of the statute, which are ‘For quieting of men’s estates and avoiding of suits.’ It is therefore that this statute and all others of this description are termed by Lord Kenyon statutes of repose” (*a*). The same phrase has been employed and similar opinions have been expressed by the Courts of the United States (*b*).

Statutes
which are
partly
penal.

Some statutes that may be properly called remedial have an operation which is partly penal. Where grievances have to be redressed or property

(*u*) *R. v. Glastonby*, Cas. Temp. Hardw. at p. 357 ; *Cone v. Bowles*, 1 Salk. 305.

(*x*) *R. v. Justices of York*, 1 A. & E. at p. 834, per Lord Denman, C.J.

(*y*) *Roe d. Pellatt v. Ferrars*, 2 B. & P. at p. 547.

(*z*) Statutory Law, p. 321.

(*a*) *Tolson v. Kaye*, 3 Brod. & Bing. at p. 222.

(*b*) *Clementson v. Williams*, 8 Cranch. 72 ; *Bell v. Morrison*, 1 Peters, 360 ; *Willison v. Watkins*, 3 Peters, 54 ; *McCluny v. Silliman*, 3 Peters, 270.

to be protected, there are offenders as well as sufferers, assailants as well as assailed. The Act which gives a remedy to one who is aggrieved almost inevitably inflicts a penalty on his opponent; "every statute is penal to somebody" (c). But if the primary object of the Act is redress and not punishment it is to be construed liberally. "The legal distinction between remedial and penal statutes is this, the former give relief to the parties grieved, the latter impose penalties upon offences committed" (d). "It is a clear and fundamental rule in construing statutes against frauds that they are to be liberally and beneficially expounded, and in our best text-book this position is to be found, that where the statute acts against the offender and inflicts a penalty it is then to be construed strictly, but where it acts upon the offence by setting aside the fraudulent transaction it is to be construed liberally" (e). Thus the 9 Anne, c. 14, against gaming, was held to be remedial when an action was brought by the party injured, but penal when one was brought by a common informer (f). On the like grounds it was declared that the Statute of Frauds was to be construed liberally as a highly beneficial statute, so as to further the object and intention of the Legisla-

(c) *Platt v. Sheriffs of London*, Plowd. at p. 36.

(d) *Lord Huntingtower v. Gardiner*, 1 B. & C. at p. 299, per Bayley, J.

(e) *Gorton v. Champneys*, 1 Bing. at p. 301, referring to Burn's Justice. It is said, however, in an American case that this rule admits of some qualification, and that "a statute which is penal to some persons, provided it is beneficial generally, may be equitably construed." *Sickles v. Sharp*, 13 Johnson, 498.

(f) *Bones v. Booth*, 2 W. Bl. 1226.

ture, which was to prevent fraud (*g*). Of the statutes of Elizabeth, avoiding fraudulent conveyances, it was said by Lord Mansfield: "These statutes cannot receive too liberal a construction, or be too much extended in suppression of fraud" (*h*). The Act 7 Geo. II. c. 8, against stock-jobbing, was considered a remedial Act (*i*), and so were the Acts giving exceptional remedies to landlords against tenants holding over (*k*), and against persons assisting in the removal of goods so as to defeat a distress (*l*). The same view was taken of the Acts against bankrupts for the relief of creditors (*m*), such as the Bankruptcy Act, 1869, which renders the levy of an execution an act of bankruptcy (*n*). It has been held that section 31 of the Companies Act, 1856, 19 & 20 Vict. c. 47, imposing a penalty on any officer of a limited company who signs on its behalf a bill of exchange upon which its name does not appear, and also rendering him personally liable to the holder of the bill, was partly remedial and partly penal (*o*). The same construction was placed upon the 7 & 8 Will. III. c. 7, for preventing false and double returns to Parliament, which gives every person grieved by a false return a right of action against

(*g*) *Baldey v. Parker*, 2 B. & C. at p. 40.

(*h*) *Cadogan v. Kennett*, 2 Cowp. at p. 434; see also *Twyne's Case*, 3 Rep. at p. 82 a; 1 Sm. L. C. 6th edit. at p. 5; *Gooche's Case*, 5 Rep. 60 b; *Bank of U. S. v. Lee*, 13 Peters, 107.

(*i*) *Billing v. Flight*, 6 Taunt. 419.

(*k*) *Wilkinson v. Colley*, 5 Burr. at p. 2698.

(*l*) *Stanley v. Wharton*, 9 Price, 301.

(*m*) 4 Inst. 277; *Smith v. Coffin*, 2 H. Bl. 463.

(*n*) *Ex parte Pearson*, L. R. 8 Ch. 667, 672, per James, L.J.

(*o*) *Penrose v. Martyr*, E. B. & E. 499.

the returning officer (*p*). Although it has been held in England that Revenue Acts ought to be strictly construed (*q*), the Courts of the United States have declared that revenue laws are not penal, but “are rather to be regarded as remedial in their character, and intended to prevent fraud, suppress public wrong, and promote the public good. They should be so construed as to carry out the intention of the Legislature in passing them, and most effectually accomplish these objects” (*r*).

The next point to be considered is, What is a liberal construction of any statute? It may be said that this consists in giving the words of the statute the largest, the fullest, and most extensive meaning of which they are susceptible. “In expounding remedial laws,” says Lord Kenyon, C.J., “it is a settled rule of construction to extend the remedy as far as the words will admit” (*s*). Everything is to be done in advancement of the remedy that can be done consistently with any construction of the statute (*t*). The language of the Act is not to be strained, but, where the words are open to doubt, they are to receive a construction which will advance the objects of the Act (*u*). In the

What is
liberal con-
struction.

(*p*) *Wynne v. Middleton*, 1 Wils. 125.

(*q*) *Marquis of Chandos v. Commissioners of Inland Revenue*, 6 Ex. at p. 479.

(*r*) *Clicquot's Champagne*, 3 Wallace, at p. 145; see also *Taylor v. U. S.*, 3 Howard, 197; *Twenty-eight cases containing wine*, 2 Benedict, 63.

(*s*) *Turtle v. Hartwell*, 6 T. R. at p. 429.

(*t*) *Atcheson v. Everitt*, 1 Cowp. at p. 391, *per* Lord Mansfield, C.J.; *Johnes v. Johnes*, 3 Dow. at p. 15, *per* Lord Eldon.

(*u*) *Dover Gas Co. v. Mayor of Dover*, 7 De G., M. & G. at p. 555, *per* Turner, L.J.

old books it is laid down that an Act mentioning offices in fee includes offices in tail (*x*), that reversioner includes remainderman (*y*), and tenant for years a tenant for half-a-year (*z*). The Statute of Marlebridge, 52 Hen. III. c. 3, provided that a lord distraining for services which were afterwards found not to be due should not be punished by fine if he suffered the distresses to be delivered according to law. "This branch," says Lord Coke, "is interpreted that the lord shall pay no fine, and therefore since this Act, by a consequent no action of trespass, *quare vi et armis* lieth against the lord in this case, for then he should pay a fine" (*a*).

Cases decided more recently on the words of modern statutes follow the same principle. It was provided by 26 Geo. III. c. 63, that no letter of attorney made by any seaman in the King's service, whereby any prize money was authorised to be received, should be valid unless it was attested by the captain. It was held that these words included an order for prize money, as the object of the Act was the protection of seamen and their earnings from the impositions which were so frequently practised (*b*). The Act which authorised justices to make orders in bastardy on the application of any "single woman" was held to include a widow (*c*), or a married woman living apart from

(*x*) 2 Inst. 412.

(*y*) *Winchester's Case*, 3 Rep. at p. 4 a.

(*z*) Co. Litt. 54 b; *Hill v. Grange*, Plowd. at p. 178; *Eyston v. Studd*, Plowd. at p. 467.

(*a*) 2 Inst. 105.

(*b*) *Turtle v. Hartwell*, 6 T. R. 426.

(*c*) *Antony v. Cardenham*, Fort. 309.

her husband (*d*), but not one who, though single when the child was born, had married since and was living with her husband when she made the application (*e*). The 5 & 6 Will. IV. c. 76, which authorises expenditure on corporate buildings, extends to the relining of a pew used by the corporation of a borough (*f*). The 1 Will. IV. c. 70, which gives power to the Courts to amend records, enables them to enter up the whole record (*g*). In statutes which are in favour of agriculture, the words "fodder for cattle" include barley which is about to be ground into meal (*h*), and the words "carts carrying manure" mean carts going for manure (*i*).

The 38 Geo. III. c. 87, provides that at the expiration of twelve months from the death of a testator, if the executor to whom probate has been granted is then residing out of the jurisdiction, a grant of administration may be made to the persons interested. As this was a remedial statute it was held that administration might be granted "at or after" the expiration of twelve months from the death of the testator, if at the time of the application for such grant the executor was residing out of the jurisdiction (*k*). In the United States a law provided that land might be sold for

(*d*) *R. v. Collingwood*, 12 Q. B. 681, 686; *R. v. Pilkington*, 2 E. & B. 546; see also *R. v. Luffe*, 8 East, 193.

(*e*) *Stacey v. Lintell*, L. R. 4 Q. B. D. 291.

(*f*) *R. v. Council of Warwick*, 8 Q. B. 926, 929.

(*g*) *Evans v. Griffith*, 9 Bing. 311.

(*h*) *Clements v. Smith*, 3 E. & E. 238.

(*i*) *Harrison v. James*, 2 Chit. 547.

(*k*) *In the goods of Ruddy*, L. R. 2 P. & D. 330.

the payment of taxes, but that the owner of the land might redeem it within two years on making certain additional payments. It was held that any title which amounted either in law or equity to an ownership of the land was sufficient to give the right to redeem, and that such a right might be exercised by a part owner (*l*). Another Act provided that no deputy should receive more than 1000 dollars for any services he might perform for the United States in any office or capacity. These words did not extend to the case of a person who filled more than one office, or prevent him from receiving more than 1000 dollars altogether, so long as he did not receive more than that sum from any one office (*m*).

Extension
of the
words of
statutes by
equity.

The principles of liberal construction have sometimes been carried very much beyond the words of statutes, and those words have been subjected to a process which is called extension by equity. The term equity, as it is here employed, is said by Lord Mansfield to be synonymous with the meaning of the Legislature (*n*), and according to Byles, J., "within the equity" is equivalent to "within the mischief" (*o*). "Equity," says Lord Coke, "is a construction made by the judges that cases out of the letter of a statute yet being within the same mischief, or cause of the making of the same, shall be within the same remedy that the statute provideth, and the reason hereof is for that the

(*l*) *Dubois v. Hepburn*, 10 Peters, 1, 22.

(*m*) *U. S. v. Morse*, 3 Story, 87.

(*n*) *R. v. Williams*, 1 W. Bl. at p. 95.

(*o*) *Shuttleworth v. Le Fleming*, 19 C. B. N. S. at p. 703.

law-makers could not possibly set down all cases in express terms" (p). "It is by no means unusual in construing a statute," says Alexander, C.B., "to extend the enacting words beyond their natural import and effect in order to include cases within the same mischief where the statute is remedial" (q). But though the practice of extending statutes by equity has been sanctioned in these and other cases (r), it has been visited by some judges with words of censure and warning. It is said by Bayley, J., to be "a dangerous rule of construction to introduce words not expressed, because they may be supposed to be within the mischief contemplated" (s). And Lord Tenterden, C.J., says: "I think there is always danger in giving effect to what is called the equity of the statute, and that it is much better to rely on and abide by the plain words, although the Legislature might possibly have provided for other cases had their attention been directed to them" (t).

Lord Westbury has cautiously restricted the equitable construction of statutes to those of early date, speaking of it as "a mode of interpretation very common with regard to our earlier statutes, and very consistent with the principle and manner according to which Acts of Parliament were at

Most common with ancient statutes.

(p) Co. Litt. 24b.

(q) *Dean and Chapter of York v. Middleborough*, 2 Younge & Jervis, at p. 215.

(r) Comyn's Digest, tit. Parl., R. 13, 15; *Eyston v. Studd*, Plowd. 465, 467, cited and approved by Pennefather, C.J., in *Murphy v. Leader*, 4 Ir. Law Rep. at pp. 143, 144.

(s) *Guthrie v. Fisk*, 3 B. & C. at p. 183.

(t) *Brandling v. Barrington*, 6 B. & C. at p. 475.

that time framed" (*u*). Most of the instances in which Acts have been extended by equity are to be found in the old books, or in decisions upon comparatively early statutes. It is stated in Plowden's Reports that "all statutes made for the redress of false covin and to give a speedier remedy to right are in advancement of justice and beneficial to the public weal, and therefore shall be extended by equity" (*x*). Again: "Where an Act is made to remedy any mischief, there in order to aid things in like degree one action has been used for another, one thing for another, one place for another, and one person for another;" and therefore the patentees of King Edward the Sixth were held to be within the equity of words describing the patentees of King Henry the Eighth (*y*).

Many instances of extension by equity are given by Lord Coke. Thus, because Acts which give a remedy for wrongs done are to be construed equitably, the Statute of Marlebridge (52 Hen. III. c. 29) gives abbots an action for trespass to trees, under the words *habent actiones ad bona ecclesiæ suæ repetenda* (*z*). In Westminster the First (3 Edw. I. c. 40) the word "ancestor" is extended by equity so as to include predecessor (*a*), and in c. 42 of the same statute the word "tenant" is extended to tenant in law as well as tenant in deed (*b*). West-

(*u*) *Hay v. Lord Provost of Perth*, 4 Macq. Sc. Ap. at p. 544.

(*x*) *Wimbish v. Tailbois*, Plowd. at p. 59.

(*y*) *Hill v. Grange*, Plowd. at p. 178.

(*z*) 2 Inst. 152.

(*a*) 2 Inst. 242.

(*b*) 2 Inst. 249.

minster the Second (13 Edw. I. c. 18), giving the writ of *elegit*, provides that the sheriff shall deliver the chattels of the debtor and one half of his land. This, being a beneficial law, is extended by equity to every other immediate officer to every other Court of Record (c). So, too, statutes speaking only of lands and tenements are extended to uses (d). It has also been held that the 4 Edw. III. c. 7, which gives executors an action for trespasses against their testators, is to be extended by equity to actions for any injury done to the personal estate of a testator in his lifetime, such as an action for the conversion of goods, for a false return, for an escape, for the removal of goods taken in execution before payment of a year's rent (e). The 31 Eliz. c. 5, provided that penal actions, where the forfeiture was to the sovereign, were to be brought within two years; where "to the Queen and to any other which shall prosecute in that behalf," within one year by such prosecutor. It had been suggested in an early case that the Act did not apply where an informer was to have the whole penalty, "because it is not within the words of the Act, and penal Acts are not extendible by equity" (f). But when the question came before the Court of Exchequer at a much later date, it was held that the Act was to be so extended (g).

(c) 2 Inst. 395.

(d) Co. Litt. 272 b; *Corbet's Case*, 1 Rep. at p. 88 a.

(e) See *Wheatley v. Lane*, 1 Wms. Saund., by Sir E. V. Williams, pp. 244, 245, where the cases are collected; *Emerson v. Emerson*, 1 Vent. 187; *Mr. Justice Moreron's Case*, 1 Vent. 30.

(f) *Chance v. Adams*, 1 Ld. Raym. 77.

(g) *Dyer v. Best*, 2 H. & C. 189.

The Statutes of Limitations, 21 Jac. I. c. 16, and 4 & 5 Anne, c. 16, have both received an equitable construction. The 4th section of the first Act provided that, if judgment for a plaintiff was reversed in error or arrested, or if a defendant was outlawed and reversed the outlawry, the plaintiff and his heirs, executors or administrators, might commence a new action within a year. It was held that "within the equity" of this section, where an action abated by the death of a plaintiff, his executor or administrator might bring a fresh action within a reasonable time, and that, where a defendant died, a fresh action might be brought against his administrator (*h*). The 19th section of the second Act provided that, if any person or persons against whom a cause of action existed, or any of them, were beyond the seas, the Statute of Limitations should not commence to run until their return. Where one joint contractor died abroad, it was held that the statute did not begin to run until his death, and that, within six years from his death, an action might be brought against his co-contractors, for though such a case was not within the literal words of the section it was within their equity (*i*).

Language
of statutes
restrained
by equity.

In all these instances the language employed by the Legislature was extended by equity so as to include cases which were not within the words of the statutes, but were within the mischief intended to be remedied. Where, however, a case was

(*h*) *Curleris v. Lord Mornington*, 7 E. & B. 283 ; note to *Hodsdon v. Harridge*, 2 Wms. Saund., 64 a.

(*i*) *Towns v. Mead*, 16 C. B. 123, 134, 141 ; 24 L. J. C. P. 89.

within the words of the statute, but was not within its mischief, the statute was restrained by equity. The 55 Geo. III. c. 192, recited that inconvenience had arisen from the necessity of making surrender of copyhold estates to the uses of wills, and enacted that dispositions made by wills should be as valid without surrender as if a surrender had been made. It was held that the inconvenience to be remedied was the necessity of a formal surrender, and that the Act did not extend to a case where a surrender was a matter of substance, such as the surrender required to give effect to the will of a married woman, who must have been examined apart from her husband before she could effectually surrender (*k*).

The term Penal Statutes, when it is employed for the purpose of describing such Acts as are to receive a strict construction, is not confined to statutes that create crimes or impose penalties, but extends to a variety of others, which may be more properly classed as restrictive. Acts which introduce capital punishment (*l*), or which shift the burden of proof in criminal cases (*m*), may be fitly called penal, and construed with extreme strictness. But it has been also laid down that a strict construction is to be given to Acts which alter the law of evidence, either by creating new statutory modes of proof, which may defeat the rights of parties (*n*), or by weakening the principles which

What are
penal
statutes.

(*k*) *Doe d. Nethercote v. Bartle*, 5 B. & Ald. 492, 501.

(*l*) *R. v. Harvey*, 1 Wils. 164.

(*m*) *Clarke v. Crowder*, L. R. 4 C. P. at p. 643, *per* Byles, J.

(*n*) *Nothard v. Pepper*, 17 C. B. N. S. at p. 50, *per* Erle, C.J.

had been deemed essential in the reception of testimony (*o*) ; to Acts which take away the right of trial by jury, and abridge the liberty of the subject (*p*) ; which confer a new jurisdiction (*q*), and derogate from the jurisdiction inherent in the Superior Courts (*r*) ; which are restrictive of the Common Law (*s*), take away vested rights (*t*), or the franchise (*u*), restrict the liberty of marriage (*x*), defeat deeds that have been solemnly executed (*y*), or cut down, abridge, restrain or avoid any written instrument (*z*). Acts which impose taxes are to be construed strictly (*a*), and so are such as impose charges (*b*), duties (*c*), or any other burdens upon the public, the Acts themselves being construed strictly, while any exception which confines the operation of such charges or duties is to be construed liberally (*d*). Clear

(*o*) *People v. Hadden*, 3 Denio, 220.

(*p*) *Looker v. Halcomb*, 4 Bing. 183.

(*q*) *Pierce v. Hopper*, 1 Strange, at p. 260.

(*r*) *Warwick v. White*, Bunbury, 106.

(*s*) 2 Inst. 455 ; *Ash v. Abdy*, 3 Swans. 664 ; *Brown v. Barry*, 3 Dallas, 367.

(*t*) *May v. G. W. Rail. Co.*, L. R. 7 Q. B. at p. 384, *per* Cockburn, C.J.

(*u*) *Flutyer v. Sir T. Lombe*, cas. temp. Hardw. 307.

(*x*) *Hodgkinson v. Wilkie*, 1 Hagg. Cons. Rep. 262.

(*y*) *Buckeridge v. Flight*, 6 B. & C. 49.

(*z*) *Morris v. Mellin*, 6 B. & C. at pp. 449, 450.

(*a*) *Daines v. Heath*, 3 C. B. at p. 941.

(*b*) *Burder v. Veley*, 12 A. & E. at p. 247 ; *Gosling v. Veley*, 12 Q. B. at p. 407 ; *Att.-Gen. v. Lord Middleton*, 3 H. & N. at p. 138 ; *Caswell v. Cook*, 11 C. B. N. S. 637.

(*c*) *Williams v. Sanger*, 10 East, 66 ; *Denn d. Manifold v. Diamond*, 4 B. & C. 243 ; *Tomkins v. Ashby*, 6 B. & C. at p. 542 ; *R. v. Barham*, 8 B. & C. 99, 104 ; *Cockburn v. Harvey*, 2 B. & Ad. 797 ; *Dickson v. R.*, 11 H. L. C. at p. 184.

(*d*) *Warrington v. Furber*, 8 East, 242 ; *Gildart v. Gladstone*, 11 East, 675.

language is necessary in Acts which infringe the legal rights of subjects or impose taxes (*e*). "Where a charge is to be imposed on the subject, it ought to be done in clear and unambiguous language," says Parke, B. (*f*); and in the United States it has been held that laws imposing duties are never construed beyond the natural import of their language, nor are duties ever imposed upon citizens on doubtful interpretations (*g*).

In like manner, Acts that empower companies to levy charges upon the public (*h*), that give companies power to take land compulsorily (*i*), that compel any man to part with his property against his will (*k*), and that establish a monopoly (*l*), are to be construed strictly, and ambiguous words in an Act incorporating a company are to be taken strongly against the company, but liberally in favour of private property (*m*). The Ships Register Acts, so far as they apply to defeat titles and work forfeitures, ought to receive a strict construction (*n*). Of the Bills of Sale Act it is said by Pollock, C.B.: "If any class of Acts ought to be construed strictly, it should be those which, having for their object the prevention of fraud, have in

(*e*) *Shaw v. Ruidlin*, 9 Ir. C. L. R. 214; *R. v. Mallow Union*, 12 Ir. C. L. R. 35.

(*f*) *Casher v. Holmes*, 2 B. & Ad. at p. 597.

(*g*) *Adams v. Bancroft*, 3 Sumner, 384; *U. S. v. Wigglesworth*, 2 Story, 369.

(*h*) *Stockton and Darlington Rail. Co. v. Barrett*, 11 Cl. & Fin. 590.

(*i*) *Lamb v. North London Rail. Co.*, L. R. 4 Ch. 522.

(*k*) *Anon*, Lofft, at p. 442, *per* Lord Mansfield, C.J.

(*l*) *Reed v. Ingham*, 3 E. & B. at p. 899, *per* Lord Campbell, C.J.

(*m*) *Scales v. Pickering*, 4 Bing. at p. 452, *per* Best, C.J.

(*n*) *Hubbard v. Johnstone*, 3 Taunt. 177.

certain cases a tendency to invalidate *bond fide* contracts" (o). An interpretation clause, declaring that one thing shall mean another, ought to be strictly construed (p), and so should a proviso when it follows an enacting clause which is general in its language and objects (q). It has been said that statutes which explain others ought to be strictly construed, and not by any equity or intentment (r), or "by any strained sense against the letter of the Act; for if any exposition should be made against the direct letter of the exposition made by Parliament there would be no end of expounding" (s). But Lord Hobart denies that "statutes of explanation shall always be taken literally," adding, as the ground of his contention, "for it is impossible that an Act of Parliament should provide for every inconvenience which happens" (t).

What is
strict con-
struction.

The strict construction that is to be put upon the Acts which we have considered is not the exact converse of liberal construction, and does not consist in giving words the narrowest meaning of which they are susceptible. What is meant by it is, that Acts of this kind are not to be regarded as including anything which is not within their letter as well as their spirit, which is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended by the

(o) *Gough v. Everard*, 2 H. & C. at p. 8.

(p) *Allsop v. Day*, 7 H. & N. at p. 463, *per* Pollock, C.B.

(q) *U. S. v. Dickson*, 15 Peters, at p. 165, *per* Story, J.

(r) *Case out of Court of Wards*, Cro. Car. at p. 34.

(s) *Butler & Baker's Case*, 3 Rep. at p. 31 a.

(t) *Hitcham v. Brooks*, Winch, at p. 123.

Legislature. "Our law," says Best, C.J., "will not allow of constructive offences; no man incurs a penalty unless the Act which subjects him to it is clearly within the spirit and letter of the statute imposing such penalty" (u). If this rule is violated, "the fate of accused persons is decided by the arbitrary discretion of judges, and not by the express authority of the laws" (x). So, too, it is said by Bayley, J., "in construing remedial statutes we are not tied down to the letter of the enactment, but effect must not be given to a penal statute unless the offence charged comes within the very words of it" (y). "It would be extremely wrong," says Abbott, J., "that a man should, by a long train of conclusions, be reasoned into a penalty, when the express words of the Act of Parliament do not authorise it" (z). And the same doctrine is maintained by Willes, J.: "I quite agree that criminal enactments are not to be extended by construction. When an offence against the law is alleged, and when the Court has to consider whether the alleged offence falls within the language of a criminal statute, the Court must be satisfied, not only that the spirit of the legislative enactment has been violated, but also that the language used by the Legislature includes the offence in question and makes it criminal" (a). So, too, it is said by Lord Truro, L.C., that the ordinary meaning of the

(u) *East India Interest*, 3 Bing. at p. 196.

(x) *Fletcher v. Lord Sondes*, 3 Bing. at p. 580, per Best, C.J. See also *U. S. v. Sharp*, Peters' Circuit Court Rep. 118.

(y) *Lord Huntingtower v. Gardiner*, 1 B. & C. at p. 299.

(z) *R. v. Bond*, 1 B. & Ald. at p. 392.

(a) *Britt v. Robinson*, L. R. 5 C. P. at pp. 513, 514.

words used in a penal statute is to be adopted, unless it plainly appears that the Legislature intended them to be read in some larger or different sense (*b*).

Most of the passages which have just been quoted occur in cases decided on the words of statutes which are properly called penal, but they apply with equal force to all Acts of Parliament that receive a strict construction. Similar rules have been laid down with regard to statutes imposing taxes or duties on the public. Of one of these statutes Lord Cairns says: "As I understand the principle of all fiscal legislation it is this. If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law the subject is free, however apparently within the spirit of the law the case might otherwise be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute" (*c*). So, too, Kindersley, V.-C., says of Acts imposing duties, as had been said before of purely Penal Statutes by Bayley, J. (*d*), that where the words of such Acts were ambiguous, they were to be construed in

(*b*) *Stephenson v. Higginson*, 3 H. L. C. at p. 686.

(*c*) *Partington v. Att.-Gen.*, L. R. 4 H. L. at p. 122.

(*d*) *R. v. Bellamy*, 1 B. & C. at p. 506.

favour of the person who was to be affected by them (e).

When we examine the principal cases in which statutes have received a strict construction, we find that at one time the Courts have adhered closely to the letter of the statute, while at another they have held that the facts before them were not brought within its meaning. An early instance of the first method of construction is given by Lord Coke, who says that the Act on Parks, Westminster Primer, c. 20, is not taken by Equity as it is so penal, and does not therefore extend to forests (f). Another case was decided upon the words of an Act which required that an Order in Council should be proclaimed in two market towns near the place where any person had been guilty of smuggling. An Order in Council was proclaimed in three market towns, one of which was six miles, a second thirty miles, and the third forty-two miles distant, from the place where this offence had been committed, and it was held that as there were five other market towns within either six, eight, or fourteen miles distance, the proclamation was insufficient (g). The Act 21 Hen. VIII. c. 13, imposed a penalty for non-residence upon every spiritual person beneficed with any parsonage or vicarage. It was decided that the penalty was not incurred by the holder of a curacy augmented by Queen Anne's bounty, as the statute was penal

Close adherence to the letter of statutes.

(e) *Wilcox v. Smith*, 4 Drewry, at p. 49.

(f) 2 Inst. 199.

(g) *R. v. Harvey*, 1 Wils. 164 ; 1 W. Bl. 20.

and must be strictly construed (*h*). Another statute referring to non-residence was the 57 Geo. III. c. 99, which required that notice of action against a clergyman for a penalty should be served on the bishop "by leaving the same at the registry of his diocese." This condition was not fulfilled by personal service on the deputy registrar out of the registry (*i*). The Act 8 Anne, c. 9, which required indentures of apprenticeship to be stamped within two months of their execution, was held not to apply to an assignment of an apprentice (*k*). In the construction of Acts imposing penalties upon gambling, it was held that half-pennies tossed up at a game called toss did not come within the words "instrument of gaming" (*l*), and that a deposit of half a sovereign as a bet on a dog race was not "betting with a coin as an instrument of gaming at a game of chance" (*m*).

Where the Act 14 & 15 Vict. c. 105, made it an offence punishable by imprisonment to personate "any one entitled to vote at an election" of guardians of the poor, it was held that the personation of a dead man was not within the statute (*n*). So where the 2 Geo. II. c. 24, imposed a penalty on any voter receiving a reward "to give his vote" at an election, it was held that this penalty was only incurred by a voter who received a reward before voting and as an inducement for voting, and not

(*h*) *Jenkinson v. Thomas*, 4 T. R. 665.

(*i*) *Vaux v. Vollans*, 4 B. & Ad. 525.

(*k*) *R. v. Ide, Inhabitants*, 2 B. & Ad. 866.

(*l*) *Watson v. Martin*, 34 L. J. M. C. 50.

(*m*) *Hirst v. Molesbury*, L. R. 6 Q. B. 130.

(*n*) *Whiteley v. Chappell*, L. R. 4 Q. B. 147; 38 L. J. M. C. 51.

by one who received a reward after he had voted (*o*). The Mines Regulation Act (23 & 24 Vict. c. 151) required safety lamps to be examined and locked by duly authorised persons, and imposed a penalty on the owner or agent of a mine if, through his default, this rule was violated. It was held that a mine owner, who had appointed a competent person to examine and lock the safety lamps, was not liable to a penalty if that person neglected his duty (*p*). The Municipal Corporation Act (5 & 6 Will. IV. c. 76) forbade aldermen to be clerks to the justices in any borough, and forbade the clerk to the justices in any borough to be directly or indirectly interested in any prosecution. The same section proceeded to impose a penalty on any person being an alderman who should act as clerk to the justices of a borough, or should otherwise offend in the premises. It was held that this penal clause must be construed strictly, and could not be extended beyond the actual meaning of the words, so as to meet the case of a clerk to the justices who had been interested in a prosecution (*q*). "There are two distinct prohibitory provisos," said Coleridge, J. (*r*), "and it is quite obvious that the intention was to annex the penalty to the violation of each. But this cannot be done if a grammatical construction is given to the words used." Another instance of a strict construction being given to a statute is to be found in a case

(*o*) *Lord Huntingtower v. Gardiner*, 1 B. & C. 297.

(*p*) *Dickenson v. Fletcher*, L. R. 9 C. P. 1.

(*q*) *Coe v. Lawrance*, 1 E. & B. 516.

(*r*) At p. 520.

where a water company was empowered to break up the soil and pavement of roads, highways and footways, but was not to enter private lands without the consent of their owner. It was held that the company could not enter a field over which there was a public footpath without the consent of the owner of the field (*s*).

In a Penal Act the word "and" cannot be read as if it was "or" (*t*), nor can the words "this Act" be taken to include an Act *in pari materiâ*. Section 145 of 3 Geo. IV. c. 126, took away the writ of *certiorari* in respect of "anything done in pursuance of this Act." That section was repealed by 4 Geo. IV. c. 95, and it was then provided by sect. 87 of this later Act that "no proceeding taken in pursuance of this Act" should be removed by *certiorari*. It was held that inasmuch as a statute taking away *certiorari* must be strictly construed, proceedings taken in pursuance of the first Act might be removed by *certiorari*, notwithstanding the prohibition in the second (*u*). So, too, it was enacted by the 2 & 3 Vict. c. 12, that no one should commence any action or prosecute any information for the recovery of any penalties "incurred under this Act," except in the name of the Attorney or Solicitor-General. The Act in question was passed for the purpose of amending 39 Geo. III. c. 79, and by one section it was provided that the two Acts should be construed as one. It was held, however, that a prosecution for an offence created

(*s*) *Scales v. Pickering*, 4 Bing. 448.

(*t*) *U. S. v. Ten cases of shawls*, 2 Paine, 162.

(*u*) *R. v. Trustees of Norwich and Watton Road*, 5 A. & E. 563.

by 39 Geo. III. c. 79, need not be brought in the name of the Attorney or Solicitor-General (*x*). Again, it was provided by the Larceny Act (24 & 25 Vict. c. 96, s. 91), that any person receiving with a guilty knowledge any chattel, the stealing or taking of which amounted to a felony, "either at Common Law or by virtue of this Act," should be guilty of felony. It was held that this statute did not apply to the receipt of goods stolen by a partner, as larceny by a partner was not made a felony until the passing of a later Act, the 31 & 32 Vict. c. 116 (*y*).

In the following cases it was held that things to which the language used by the Legislature might fairly have extended were not within the meaning or the spirit of a penal statute. The 2 Geo. III. c. 19, as amended by the 39 Geo. III. c. 34, imposed a penalty on any person who should take, kill, or have in his possession any partridges between the 1st of February and the 1st of September. It was held that a person having partridges in his possession between those two dates was not liable to the penalty if the partridges had been killed before the earliest of the two dates, as otherwise a man might be liable to a penalty if he lawfully killed a partridge on the last moment of February 1st, but had it in his possession on the first moment of February 2nd (*z*). The 25 Hen. VIII. c. 20, imposed a penalty on an archbishop who refused to confirm the election of a bishop by the dean and

Cases not
within the
meaning.

(*x*) *R. v. Johnson*, 8 Q. B. 102.

(*y*) *R. v. Jesse Smith*, L. R. 1 C. C. R. 266.

(*z*) *Simpson v. Unwin*, 3 B. & Ad. 134.

chapter. It was held that the penalty did not attach unless the archbishop's refusal was without lawful cause (*a*). Where an Act made it an offence for any one to "fabricate" a voting paper, it was decided that the word "fabricate" imported a criminal intention, and that in the absence of such intention there could be no offence against the statute (*b*). So where penalties were imposed upon bakers who used certain ingredients in bread (*c*), upon persons sending dangerous goods by railway (*d*), or being in possession of stores which had the admiralty mark (*e*), it was held that knowledge was essential to constitute any of these offences. The 7 & 8 Vict. c. 112, enacted that if any seaman deserted his ship his wages should be forfeited to the owner. It was held that a seaman who was treated with such cruelty as justified him in refusing to remain on board his ship was not guilty of desertion within the meaning of the Act, and might bring an action to recover his wages (*f*). An Act imposing a duty on horses which were hired to be used in travelling, was declared not to extend to the case of a horse which was ridden some miles into the country for pleasure (*g*). Where a canal company was empowered to appropriate the water raised from certain mines, provided

(*a*) *R. v. Abp. of Canterbury*, 11 Q. B. at p. 626, *per* Patteson, J.

(*b*) *Aberdare Local Board v. Hammett*, L. R. 10 Q. B. 162.

(*c*) *Core v. James*, L. R. 7 Q. B. 135.

(*d*) *Hearne v. Garton*, 2 E. & E. 66.

(*e*) *R. v. Sleep*, L. & C. 44; 30 L. J. M. C. 170. Contrast with these cases, *Lee v. Simpson*, 3 C. B. 871; *R. v. Woodrow*, 15 M. & W. 404; *R. v. Harvey*, L. R. 1 C. C. R. 284; *R. v. Dean*, 12 M. & W. 39.

(*f*) *Edward v. Trevellick*, 4 E. & B. 59.

(*g*) *Ramsden v. Gibbs*, 1 B. & C. 319.

the produce of such mines were carried along some part of the canal, it was held that this meant substantially the whole produce, as the effect of the Act was to enable one person to impose a burden on the property of another (*h*).

The rule which requires penal statutes to be strictly construed must not be stretched so far as to defeat the intention of the Legislature. It must never be forgotten that the general principles of construction apply to all statutes, whether they be remedial or penal (*i*). Whether statutes are construed strictly or liberally, the intention of the Legislature is to be ascertained by means of the words which it has used according to the ordinary rules of grammatical construction. Although an Act may be penal, the Court must not by refining defeat the obvious intention of the Legislature (*k*), or frustrate the object of the Act by putting a forced and strained meaning upon its language (*l*). "It is not true," says Buller, J., "that the Court in the exposition of penal statutes are to narrow the construction. We are to look to the words in the first instance, and where they are plain we are to decide upon them" (*m*). "Something," says Alexander, C.B., "has been said about the different rules of construing statutes with reference to their being remedial or penal. That is certainly a distinction of some consequence where the question of construction comes to a measuring cast; but

The object of the statute must not be defeated.

(*h*) *Finch v. Birmingham Canal Co.*, 5 B. & C. 820.

(*i*) *Att.-Gen. v. Lockwood*, 9 M. & W. at p. 398, *per* Alderson, B.

(*k*) *Henslow v. Fawcett*, 3 A. & E. at p. 58, *per* Coleridge, J.

(*l*) *Dewhirst v. Pearson*, 1 Cr. & M. at p. 376, *per* Gurney, B.

(*m*) *R. v. Hodnett, Inhabitants*, 1 T. R. at p. 101.

where the language of an Act of Parliament is clear and plain I am bound to give it effect. I am not at liberty, upon a suggestion that this is a Penal Act, to detract from the plain meaning of the language used by the Legislature, and to narrow and restrict the provisions which in my opinion they have unequivocally made" (n). So, too, it is said by James, L.J. : " No doubt all penal statutes are to be construed strictly ; that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a *casus omissus*, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed like any other instrument, according to the fair common-sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument " (o).

Passages similar to those which have been quoted occur in many American decisions, and the judges

(n) *Att.-Gen. v. Jefferys*, 13 Price, at p. 580.

(o) *Dyke v. Elliott*, L. R. 4 P. C. at p. 191.

of the United States have clearly laid down the principle that penal statutes are to be construed reasonably, according to the manifest import of the words (*p*), so as to give effect to the intention of the Legislature (*q*), and that the intention expressed in such Acts is not to be narrowed by the exclusion of cases to which the words would naturally extend (*r*), or defeated by a forced and over strict construction (*s*). It has been suggested by one judge that the doctrine of strict construction as applicable to penal statutes dated from the time when other statutes were "extended equitably, as it was called, beyond their natural meaning," and that the sole effect of this doctrine was to render penal statutes exempt from such extension (*t*). In another case the same judge uses the following language: "Whoever seeks to impose a tax or penalty must establish the right; whoever seeks to punish must establish the guilt. The rule properly understood is that the burden of proof is on the assertor, not that wherever there is any doubt a statute is to be said not to mean what it does mean" (*u*). So, too, where the language of a statute is susceptible of two meanings, even if the wider of those two would have the effect of inflicting a penalty, while the other would not, there is no

(*p*) *The Bolivia*, 1 Gall. at p. 83; *The Industry*, 1 Gall. at pp. 117, 118, *per* Story, J.

(*q*) *The Harriet*, 1 Story, 251; *The Enterprise*, 1 Paine, 32.

(*r*) *U. S. v. Winn*, 3 Sumner, 209, 211, *per* Story, J.

(*s*) *U. S. v. Wiltberger*, 5 Wheat. at pp. 95, 96; *U. S. v. Morris*, 14 Peters, 464, 475; *American Fur Co. v. U. S.* 2 Peters, 358.

(*t*) *Att.-Gen. v. Sillem*, 2 H. & C. at p. 532, *per* Bramwell, B.

(*u*) *Lady Emily Foley v. Fletcher*, 3 H. & N. at p. 781.

rule which requires the adoption of the narrower meaning (x).

Instances
in which
this rule
has been
followed.

It is not necessary to multiply instances in which penal statutes have been construed according to these principles. Some such instances, however, are to be found amongst the cases decided in those early times when the severity of the law was tempered by an extremely literal construction. Where it was made felony for a soldier to depart from his captain, the majority of the judges held that it was felony for him to depart from a conductor who was taking him to the sea-side. The ground of this decision was that "a conductor is a captain within the intention and meaning of the Statutes of 7 Hen. VII. c. 1 and 3 Hen. VIII. c. 1, which statutes, though they be penal, yet being made for the public service and good of the King and realm, may very well be taken liberally according to the intent of the makers" (y). So too, by the Statute 25 Edw. III. the killing of a master is adjudged to be treason, and it was held that this extended to the killing of a mistress, because, according to Lord Coke, penal statutes have been taken by intendment to remedy mischief, in advancement of justice and in suppression of crimes (z). According to Plowden, however, this construction is not within the equity of the statute, but is rather within its

(x) *Myers v. Baker*, 3 H. & N. at p. 812, per Pollock, C.B.; *Hibernian Mine Co. v. Tuke*, 8 Ir. C. L. R. 321, per Lefroy, C.J.; *U. S. v. Hartwell*, 6 Wallace, 385.

(y) *The Soldier's Case*, Cro. Car. 71.

(z) *Powlter's Case*, 11 Rep. 34 b.

words, for master and mistress are the same thing in effect (a).

Turning from these early cases we find it has been decided in Ireland that where a company was authorised to levy a toll upon every ship "drawing more than five feet of water" which entered a certain harbour, that toll was payable by any ship if its ordinary draught of water exceeded five feet, although at the time of its entering the harbour it drew less than five feet (b). In the United States it has been held that a statute which rendered it penal for the master of a ship to beat or imprison any of the crew, included under the word "crew" any of the officers (c). A ship on its outward voyage to the coast of Africa, where it was intended that a cargo of slaves should be taken on board, was held to be "employed or made use of in the transportation of slaves" (d). A statute provided that any person who should dig up any human body, without being authorised by the Board of Health, or the selectmen of any town in the Commonwealth, should be liable to imprisonment. It was held that it was sufficient to aver in an indictment that the person accused of digging up a human body was not authorised by the selectmen of the town where the body was buried. "Taken strictly," says Parker, C.J., "without reference to the subject matter and the manifest intention and object of the Legislature, it would appear that in

(a) *Partridge v. Strange*, Plowd. at p. 86.

(b) *Hibernian Mine Co. v. Tols*, 8 Ir. C. L. R. 321.

(c) *U. S. v. Winn*, 3 Sumner, 209, per Story, J.

(d) *U. S. v. Morris*, 14 Peters, 464.

order to sustain an indictment on the statute, it must be averred and proved that the Board of Health or selectmen of no town in the Commonwealth had given licence to the act complained of. The rule (which requires a strict construction of penal statutes) does not exclude the application of common sense to the terms made use of in the Act, in order to avoid an absurdity which the Legislature ought not to be presumed to have intended" (e).

STATUTES IN PARI MATERIÂ.

Another kind or class of statutes has now to be considered. It consists of such statutes as relate to the same subject (f), to the same persons or things (g), and are generally described as Acts *in pari materiâ*. Such statutes are to be construed so that each of them may explain, interpret, and enforce the others, and although they may have been passed at different times, although some of them may have expired, or have been repealed (h), although there may be no actual reference in one of them to the others, or any clause directing the several Acts to be read as one (i), they must be regarded as forming one harmonious system, or as so many parts of the same statute (k). This rule

(e) *Commonwealth v. Loring*, 8 Pickering, at p. 373.

(f) *M'William v. Adams*, 1 Macq. Sc. Ap. at p. 141, *per* Lord Truro.

(g) *United Society v. Eagle Bank*, 7 Connecticut, at p. 469.

(h) *Ex parte Copeland*, 2 De G., M. & G. 914, 919, citing *R. v. Loxdale*, 1 Burr. at p. 447, *per* Lord Mansfield, C.J.

(i) *Waterlow v. Dobson*, 27 L. J. Q. B. at p. 55, *per* Lord Campbell, C.J.

(k) *R. v. Loxdale*, 1 Burr. at p. 447 ; *Palmer's Case*, 1 Leach, C. C.

has been applied to the Stamp Acts (*l*), to the Revenue Laws (*m*), to the Statute of Limitations (*n*), and is most appropriate in the case of ancient statutes (*o*). If an Act is passed which prohibits the doing of a certain thing, and afterwards another Act imposes a penalty on any one who does it, the two Acts are to be taken as one (*p*). The Act 3 & 4 Will. IV. c. 42, giving costs upon judgment in a demurrer, is to be read as one Act with the 4 & 5 Will. IV. c. 39, which, while giving costs to the successful party *in quare impedit*, enables the Court or judge to relieve from payment of costs a bishop who has had good cause for defending an action (*q*). As the Lands Clauses Act was passed "to make a general code regulating the manner in which lands might be taken under the authority of Parliament, and compensation made for injury occasioned by what was thus legalised," it may be presumed that in passing subsequent Acts the Legislature intended to follow that general code, unless a contrary intention has been clearly manifested (*r*).

One of the chief results of the practice of reading Acts *in pari materiâ* as if they formed parts

Legislative
or judicial
interpreta-

355; *M'William v. Adams*, 1 Macq. Sc. Ap. at p. 141; *Patterson v. Winn*, 11 Wheaton, 385, 386; *The Harriet*, 1 Story, 251; *U. S. v. Hewes*, Crabbé, 307; *Dubois v. M'Lean*, 4 M'Lean, at p. 489.

(*l*) *Crosley v. Arkwright*, 2 T. R. at p. 609, *per* Buller, J.

(*m*) *U. S. v. Collier*, 3 Blatchford's Circ. Court Rep. 325.

(*n*) *Murray v. East India Co.*, 5 B. & Ald. at p. 215.

(*o*) *Ex parte Bishop of Exeter*, 10 C. B. at p. 140.

(*p*) *Stradling v. Morgan*, Plowd. at p. 206.

(*q*) *Edwards v. Bishop of Exeter*, 6 Bing. N. C. 146.

(*r*) *R. v. Lord Mayor of London*, L. R. 2 Q. B. at pp. 295, 296, *per* Blackburn, J.

tion of one
Act to be
followed in
another.

of the same statute, is that the legislative or judicial interpretation which has been given to words in one of such Acts will generally be adopted in another. "Whatever has been determined upon the construction of one statute," says Buller, J., "is a sound rule of construction for another which is *in pari materia*" (s). This principle was followed with regard to the 11 & 12 Vict. c. 43, which enacted that when justices should adjudge a defendant to be imprisoned, and he should "then be in prison undergoing imprisonment upon a conviction for any other offence," they might order the imprisonment for the subsequent offence to commence at the expiration of that to which he had been previously sentenced. Similar words to these were used in the 7 & 8 Geo. IV. c. 28, and under those words the judges had been in the habit of passing consecutive sentences upon persons convicted at the same time of two separate offences, so that the sentence for one offence might commence at the expiration of the sentence for the other. It was held that the same construction was to be given to the words of the later statute (t). In another case, Martin, B., questions the propriety of the rule which is now under consideration. "I protest," says he, "against the idea that when an Act of Parliament is made as clear as words can make it, you are to cite as authorities as to its construction and as a guide to us in its interpretation,

(s) *R. v. Mason*, 2 T. R. at p. 586.

(t) *R. v. Cutbush*, L.R. 2 Q. B. 379, reported as *lic Paine*, 8 B. & S. 319.

cases decided years and years before upon another statute" (u).

Of legislative interpretation it is said that where the same words occur in two Acts *in pari materiâ*, and in the first Act the Legislature has over and over again explained the meaning of those words, they ought to have the same sense in the second Act (x). So, too, "where in two statutes *in pari materiâ* the same words occur, and in one of them the meaning is clear and in the other doubtful, I think," says Littledale, J., "we ought to call in aid the meaning put upon those words by the Legislature in the statute where they are not ambiguous, and give them the same meaning in the other statute" (y). Therefore, it was held that 48 Geo. III. c. 111, which provided that no ballot, enrolment, and service under that Act should make void any indenture of apprenticeship or contract of service, applied only to indentures or contracts existing at the time of such ballot, as similar words were so restricted in the 52 Geo. III. c. 68, which was *in pari materiâ* (z). Again, the Bankruptcy Act, 5 Geo. II. c. 30, provided that a bankrupt's certificate might be refused if within a year before his bankruptcy he had lost the sum of £100 by contracts for the purchase of "any stock of any company whatsoever, or any parts or shares of any Government or public funds or securities." The Bankruptcy Act, 1849, 12 & 13 Vict. c. 106, which contained

(u) *R. v. Moah*, Dearsley's C. C. at p. 639.

(x) *Glennon's Case*, Alcock's Registry Cases, at p. 85.

(y) *R. v. Taunton St. James*, 9 B. & C. at p. 838.

(z) *R. v. Taunton St. James*, 9 B. & C. 831.

similar provisions, used merely the words, "Government or other stock." These words, however, were taken to be as extensive as those in the earlier statute, and were read by reference to them so as to include railway shares (*a*).

Although an identity of language in Acts *in pari materiâ* gives rise to the inference that the meaning of the Acts ought also to be identical, a change of language does not necessarily lead to an opposite conclusion (*b*). Thus in the case from which these words are taken, it was held that "parochial rates" in 6 Geo. IV. c. 57, had the same meaning as "taxes of the parish" in 3 Will. and Mary, c. 11, and 35 Geo. III. c. 101. In another case, the comparison of two Acts *in pari materiâ* led the Supreme Court of the United States to the conclusion that in the later Act a word had been accidentally omitted. An Act of Congress provided that suits "against" certain associations might be brought in the district Courts. An earlier Act had made the same provision for suits "by and against" such associations, and it was held that a reference to the earlier Act enabled the word "by" to be supplied in the later (*c*).

Provisions
made for
one Act
adopted in
another.

We have seen that in construing penal statutes the Court has always restricted the term "this Act," according to its literal meaning, to the Act itself in which that term was employed. But in statutes which are *in pari materiâ*, and to which the rule

(*a*) *Ex parte Copeland*, 2 De G., M. & G. 914.

(*b*) *R. v. East Teignmouth, Inhabitants*, 1 B. & Ad. at p. 249, *per* Bayley, J.

(*c*) *Kennedy v. Gibson*, 8 Wallace, 498.

of strict construction does not apply, that term has a much more elastic meaning, and the words "this Act" include not only the Act itself, but earlier or later Acts, which are treated as forming parts of the same statute. Thus it was provided by 4 & 5 Will. IV. c. 76, that "in the construction of this Act" the word parish should include city. The Act 9 & 10 Vict. c. 66, which incorporated the provisions of the Act of William the Fourth, and provided that the two Acts should be construed as one, enacted that no person should be removed from any "parish" in which he had resided for five years. It was held that by the combined operation of the two Acts, no person could be removed from a city in which he had resided for five years (*d*). By the Sanitary Act, 1866 (29 & 30 Vict. c. 90), the second part of that Act was to be construed as one with the Act 18 & 19 Vict. c. 121. One of the sections in the second part of the Act of 1866 enacted that "the provisions of *this* Act" should not extend to certain manufactures. It was held that by the effect of this section the manufactures in question were exempted from the operation of the 18 & 19 Vict. c. 121 (*e*). Again, it was provided that the County Courts Act, 1867 (30 & 31 Vict. c. 142), and the several Acts in a schedule which comprised the County Courts Act, 1856 (19 & 20 Vict. c. 108), should be construed together as one Act. Section 35 of the Act of 1867 enacted, "the words County Court when used in this Act, or any future Act, shall include the City of London Court." It was

(*d*) *R. v. Forncett St. Mary*, 12 Q. B. 160.

(*e*) *Norris v. Barnes*, L. R. 7 Q. B. 537.

held that by virtue of these words the provisions of the Act of 1856 applied to the City of London Court (*f*). These cases were not cited to the Common Pleas Division when a similar question arose under the Municipal Elections Act, 1875 (38 & 39 Vict. c. 40). Although by section 13 that Act was to be construed as one with the Municipal Corporations Act (5 & 6 Will. IV. c. 76), it was held that the effect of this section was not to incorporate in the later Act the provisions of the earlier. Therefore, where the initial of a Christian name was inserted in a nomination paper at a municipal election, this was considered a fatal objection to the validity of the nomination paper, and it was decided that the provisions of 5 & 6 Will. IV. c. 76, which remedied every "misnomer or inaccurate description in any voting paper required by this Act," did not extend to a misnomer or inaccuracy in a paper required by the Act of 1875 (*g*).

Does
express
reference
to one Act
extend to
another
in pari
materiâ?

Another point in connection with these statutes, upon which there have been conflicting decisions, occurs in cases where one Act has been expressly mentioned, and this reference has either been confined to the Act itself, or extended to amending Acts or Acts *in pari materiâ*. The Statute of Limitations (3 & 4 Will. IV. c. 42) provided that Ireland should not be deemed to be beyond the seas within the meaning of that Act, or of the Act of the twenty-first year of James the First, for the

(*f*) *Blades v. Lawrence*, L. R. 9 Q. B. 374.

(*g*) *Mather v. Brown*, L. R. 1 C. P. D. 596.

limitation of actions. It was held that Ireland was still a place beyond the seas within 4 & 5 Anne, c. 16, although that Act was *in pari materia* as one of the Statutes of Limitations (*h*). Again, the Act 1 Jac. I. c. 9, rendered an innkeeper, who permitted an inhabitant to tittle, liable to a penalty, if he was convicted upon the oath of two witnesses. This Act having expired was revived and made perpetual by 21 Jac. I. c. 7, but one witness was substituted for two. Then the Act 1 Car. I. c. 4, provided that an alehouse-keeper who permitted a stranger to tittle should incur "the same penalty, and in such manner to be proved as in the former statute of the first year of his late Majesty's reign." It was held that the reference was to the first Act as originally enacted, and not as altered by the intermediate Act, and that, consequently, two witnesses were required under 1 Car. I. c. 4 (*i*). On the other hand, when it was enacted that the forfeitures and penalties inflicted by 10 Geo. III. c. 44, should be recovered and levied by any justice of the peace, "by such ways and means as the penalties and forfeitures in the said Act of the 9th of Anne are directed to be levied and recovered," it was held that this did not mean that the method of recovery prescribed by the Act of Anne was to be followed, but the method prescribed by subsequent Acts, and especially that which was prescribed by the 10 Geo. III. c. 44 (*k*). So, too, it is said that when an expiring Act is revived all other Acts which

(*h*) *Lane v. Bennett*, 1 M. & W. 70.

(*i*) *R. v. Dove*, 3 B. & Ald. 596.

(*k*) *Duck v. Addington*, 4 T. R. 447.

have been passed for the purpose of explaining or amending it are revived also as attendant upon it (*l*).

Extension
of the
language
of statutes
by refer-
ence to
others in
*pari ma-
teriâ*.

The following instances will show how the words of one statute have sometimes been extended by a reference to another statute which is *in pari materiâ*. By the 25 Geo. III. c. 80, a penalty of £50 was imposed on any attorney who took proceedings without having obtained a certificate, and it was provided that this penalty might be sued for by a common informer. The 37 Geo. III. c. 90, inflicted a penalty of the same amount on any attorney who took proceedings without entering his certificate in one of the Courts wherein he was admitted, but made no provision for the recovery of this penalty. It was held that as the Acts were *in pari materiâ*, the penalty imposed by the second Act might be sued for by a common informer in the manner which the first Act provided (*m*). The County Courts Act, 1846 (9 & 10 Vict. c. 95), imposed a penalty on "every clerk, treasurer, high bailiff, or other officer of any such Court" who should act as attorney or agent for any party. The County Courts Act, 1850 (13 & 14 Vict. c. 61), empowered the Lord Chancellor to remove the "clerk, high bailiff, or any assistant clerk" from his office. Reading the two Acts together as *in pari materiâ*, the Court of Queen's Bench held that the assistant clerk who was described in the later Act was an officer of the County Court within

(*l*) *Williams v. Roughedge*, 2 Burr. 747.

(*m*) *Davis v. Edmondson*, 3 B. & P. 382.

the provisions of the earlier Act, and was liable to the penalty which it inflicted (*n*).

TEMPORARY STATUTES.

Temporary Acts are those the duration of which is limited by the Legislature itself, and which expire without the necessity of actual repeal at the end of the time fixed for their continuance. If, however, a temporary Act is made perpetual by another Act, it is in effect perpetual *ab initio* (*o*), and though there may be an interval between the expiration of a law and its revival, rights acquired under the original Act are preserved, unless those of others have intervened during the interval (*p*). Offences against a temporary Act cannot be punished after its expiration without special provision for that purpose (*q*). But rights conferred by a temporary Act do not necessarily come to an end with its expiration. In this respect, according to Parke, B., "there is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed and the duration of the provisions are matters

(*n*) *Ackroyd v. Gill*, 5 E. & B. 808.

(*o*) *R. v. Swiney*, 1 Alcock & Napier, 131.

(*p*) *Stephens v. M'Cargo*, 9 Wheaton, 502.

(*q*) *U. S. v. The Helen*, 6 Cranch. 203; *The Irresistible*, 7 Wheaton, 551.

of construction" (*r*). Thus the 6 Geo. IV. c. 133, which was to remain in force until August, 1826, provided that persons holding commissions as surgeons or assistant surgeons in the army might practise as apothecaries without passing an examination, upon their receiving the certificate required by another statute. It was decided that persons who held commissions before August, 1826, might practise as apothecaries after that date (*s*). In like manner, where any statute is repealed by a temporary Act, the Court has to consider whether such repeal is intended to be temporary or perpetual. In one case it was held that such a repeal was intended to be absolute, and that the repealed Act did not revive when the repealing Act expired (*t*). Where, however, the 46 Geo. III. c. 139, which repealed in part 42 Geo. III. c. 38, was to continue in force until a certain day, it was decided that the provisions of the earlier Act were merely suspended until that day, and came into force again when the later Act expired (*u*).

Perpetual statute not rendered temporary by unnecessary continuance.

A statute which is perpetual in the first instance does not become temporary if by a mistake of the Legislature it is treated as needing to be continued. An Act of the 37 Hen. VIII. as to setting prices of wine by retail contained no provision limiting its own duration, and was therefore perpetual. Subsequently in the 5th year of Edw. VI. an Act was passed continuing the former Act till the end

(*r*) *Stevenson v. Oliver*, 8 M. & W. at p. 241.

(*s*) *Stevenson v. Oliver*, 8 M. & W. 234.

(*t*) *Warren v. Willde*, 3 East, 205, 211, 212.

(*u*) *R. v. Rogers*, 10 East, 569.

of the next session. It was held that the Act of 37 Hen. VIII. did not expire, and was not repealed at the end of the time to which it was so continued, for "an affirmative continuance of a statute perpetual cannot work an abrogation of the statute" (x).

(x) *Prices of wine*, Hob. 215.

CHAPTER VI.

THE SEVERAL PARTS OF A STATUTE.

What are
the parts
of a
statute.

THE several parts of a statute which have to be considered are its title, preamble, clauses or sections, the provisoes, savings, and exceptions contained in such clauses, and the schedules annexed to the Act.

THE TITLE.

Is the title
part of a
statute?

What effect should be given to the title of a statute has been the subject of much discussion. According to some judges the title is no part of an Act of Parliament; it ought not in strictness to be taken into consideration at all (*a*); it cannot be resorted to for the purpose of construing the provisions of an Act (*b*), nor can it cut down enacting words which go beyond it (*c*). "As to the style or title of the Act," it is said in an early case, "that is no parcel of the Act, and ancient statutes were without any title, and many Acts are of

(*a*) *Salkeld v. Johnston*, 2 Ex. at pp. 282, 283, *per* Pollock, C.B.

(*b*) *Hunter v. Nockolds*, 1 Mac. & G. 640.

(*c*) *Hannant v. Foulger*, 8 B. & S. at p. 430, *per* Blackburn, J.

greater extent than the titles are" (*d*). "It is true," says Lord Holt, "the title of an Act of Parliament is no part of the law or enacting part, no more than the title of a book is part of the book; for the title is not the law, but the name or description given to it by the makers" (*e*). "The title," says Lord Hardwicke, "is no part of the Act, and has often been determined not to be so, nor ought it to be taken into consideration in the construction of an Act, for originally there were no titles to the Acts, but only a petition and the King's answer; and the judges thereupon drew up the Act into form and then added the title; and the title does not pass the same forms as the rest of the Act, only the Speaker after the Act is passed mentions the title and puts the question upon it; therefore the meaning of the Act is not to be inferred from the title" (*f*). A similar reason for disregarding the title is given by Lord Mansfield, who says that the title is "no part of the law; it does not pass with the same solemnity as the law itself; one reading is often sufficient for it" (*g*). It has been said by Treby, C.J., that the title of Acts of Parliament was comparatively a new usage, and began about the 11th year of Henry the Seventh (*h*), while Lord Cranworth states that though the question as to the title of an Act is put from the chair in

(*d*) *Powlter's Case*, 11 Rep. 33 b.

(*e*) *Mills v. Wilkins*, 6 Mod. 62; 2 Salkeld, 609.

(*f*) *Att.-Gen. v. Lord Weymouth*, Ambler, at p. 22.

(*g*) *R. v. Williams*, 1 W. Bl. at p. 95.

(*h*) *Chance v. Adams*, 1 Ld. Raym. 77.

the House of Commons, it is never put in the House of Lords (*i*).

Cannot re-
strict the
effect of
general
language.

Following these decided expressions of such eminent judges, the Courts have held in more than one case that the effect which is to be given to the general language of statutes is not to be restrained by the use of narrower language in their titles. Thus the 1 Will. IV. c. 18, is entitled, "An Act to explain and amend an Act of the sixth year of his late Majesty George the Fourth as far as regards the settlement of the poor by the renting and occupation of tenements." But the Act itself is not confined by these words to the settlements which are specified, and it extends to settlements by payment of rates (*k*). So the 3 & 4 Will. IV. c. 67, the title of which is "An Act to amend an Act . . . for the uniformity of process in personal actions," extends to real actions (*l*). The 56 Geo. III. c. 50, is "an Act to regulate the sale of farming stock taken in execution," but it applies to sales of stock not taken in execution (*m*).

May show
the inten-
tion of the
Legisla-
ture.

On the other hand, it has been said that "in modern times the title is the Act of the Legislature," although "it does not appear to have been so anciently" (*n*). While admitting that the title of an Act of Parliament is no part of the law, Wightman, J., says that it may tend to show the

(*i*) *Jeffries v. Alexander*, 8 H. L. C. at p. 603.

(*k*) *R. v. Brighthelmstone, Inhabitants*, 1 Q. B. 674.

(*l*) *Doe d. Hudson v. Roe*, 18 Q. B. 806.

(*m*) *Wilmot v. Rose*, 3 E. & B. 563.

(*n*) *R. v. Abp. of Canterbury*, 11 Q. B. at p. 548, *per* Lord Denman, C.J.

object of the Legislature (*o*). It has been suggested in Ireland that the title may be called in aid when it throws light on any ambiguity (*p*), or when it enables the Court to give a consistent meaning to doubtful language in the body of a statute (*q*). In the United States it has been declared that while the title cannot control plain words in the body of the Act, yet taken with other parts it may assist in removing ambiguities. "Where the mind labours to discover the design of the Legislature, it seizes everything from which aid can be derived; and in such cases the title claims a degree of notice, and will have its due share of consideration" (*r*). In another American case it is laid down that "at the present day the title constitutes a part of the Act, but it is still considered as only a formal part; it cannot be used to extend or to restrain any particular provisions contained in the body of the Act. It is only when the meaning of these is doubtful that resort may be had to the title, and even then it has little weight. It is seldom the subject of special consideration by the Legislature" (*s*).

One or two instances only are to be found in which the title of an Act has been allowed any influence upon its construction. In the 25 Geo. II. c. 6, the words "any will or codicil" were limited to wills and codicils of real estate, partly because

Sometimes influences the construction of statutes.

(*o*) *Johnson v. Upham*, 2 E. & E. at p. 263.

(*p*) *Daniel v. Bingham*, 4 Ir. L. R. at p. 293.

(*q*) *Shaw v. Ruddin*, 9 Ir. C. L. R. 214; *R. v. Mallow Union*, 12 Ir. C. L. R. 35.

(*r*) *U. S. v. Fisher*, 2 Cranch. Sup. Ct. at p. 386.

(*s*) *Hadden v. The Collector*, 5 Wallace, at p. 110.

the title of the Act was confined to such wills and codicils (*t*). As the title of Lord Campbell's Act (9 & 10 Vict. c. 93) was "an Act for compensating the families of persons killed," it was held that the Act did not extend to the solace of the wounded feelings of the families which were to be so compensated, but was confined to compensation for pecuniary loss (*u*). In one case the Legislature incorporated the title of an Act by a reference in the first section. The 31 & 32 Vict. c. 89, is entitled "An Act to alter certain provisions in the Acts for the Commutation of Tithes, the Copyhold Acts," &c., and the first section begins, "notwithstanding any provisions in the said Acts contained." It has been objected that if the title of an Act is no part of the Act, such a reference as this can have no effect or meaning (*x*). But even if the title is not usually part of an Act, it may be made part of an Act by reference or incorporation. Under ordinary circumstances it may be part of an Act for the purpose of identification, while it is no part of the Act for the purposes of construction. The short titles which are now given to Acts of Parliament for the convenience of citation are certainly parts of those Acts, for they are enacted in the body of each statute. But it has never been suggested that as they are unquestionably the act of the Legislature and form part of a statute, they are to affect its construc-

(*t*) *Brett v. Brett*, 3 Addams, 210.

(*u*) *Blake v. Midland Rail. Co.*, 18 Q. B. 93, 109.

(*x*) *Roscoe's Nisi Prius*, 12 edit. p. 107.

tion, or that they give any clue to the intention of the Legislature.

Before the introduction of short titles it was found inconvenient to cite Acts of Parliament by ^{Full title} ^{need not} ^{be cited.} their full titles, which were often cumbrous strings of words and sentences. It was therefore enacted by the 13 & 14 Vict. c. 21, s. 3, that in referring to Acts of Parliament it should be sufficient to cite the year of the King's reign in which the Act was made, the statute or session and the chapter or section, without reciting the title of the Act. A more simple mode of citation is suggested by the Select Committee of 1875 on Acts of Parliament, which is that statutes should be numbered by the year instead of the reign, so that 38 & 39 Vict. c. 100, would be Act 100, 1875.

THE PREAMBLE.

The preamble has also caused some conflict of opinion, and extreme importance has been attached to it in some cases, while in others it has received little or no attention. The usual definition of the preamble certainly gives it a prominent place among the means which may be adopted for ascertaining the intention of the Legislature. Chief-Justice Dyer calls the preamble of a statute "a key to open the minds of the makers of the Act, and the mischief which they intended to redress" (*y*). Lord Coke employs the same figure: "The rehearsal or preamble of the statute is a good means to find out the meaning of the statute, and, as it

(*y*) *Stowel v. Zouch*, Plowd. at p. 369.

were, a key to open the understanding thereof" (z). Lord Holt considered that the preamble was no part of the statute, but contained generally its motives and inducements (a). In later times it has been said that the preamble affords a good clue to discover the plain object and general intention of the Legislature (b), and that it may be looked at as showing what were the existing circumstances at the time of the passing of any statute (c).

Effect
usually
given to it.

Although such wide expressions as these have been used in the definition of the preamble, the effect which has generally been given to it is by no means so extensive. It has often been decided that, while the preamble may explain doubtful or ambiguous words in the body of the Act, it will not control the operation of an enacting clause which is couched in clear language, although that enacting clause may go far beyond the expressed object of the statute (d). "Supposing that the enacting words are clear," says Lord Denman, C.J., "I must say that there is no line of reasoning so dangerous as that which would deprive the Statute Law of its fair meaning, or, in other words, repeal

Cannot
control
enacting
words.

(z) Co. Litt. 79 a ; 4 Inst. 330.

(a) *Mills v. Wilkins*, 6 Mod. 62.

(b) *Halton v. Cove*, 1 B. & Ad. at p. 558.

(c) *Att.-Gen. v. Earl Powis*, Kay, 186.

(d) *R. v. Athos*, 8 Mod. at p. 144 ; *Perkins v. Sewell*, 1 W. Bl. at p. 659, per Lord Mansfield, C.J. ; *Crespigny v. Wittenoon*, 4 T. R. at p. 793, per Buller, J. ; *R. v. Pierce*, 3 M. & S. at p. 66, per Lord Ellenborough, C.J. ; *Trueman v. Lambert*, 4 M. & S. at pp. 239, 240, per Dampier, J. ; *Williams v. Beaumont*, 10 Bing. at p. 272, per Bosauquet, J. ; *Edwards v. Hodges*, 15 C. B. at pp. 488, 489, per Jervis, C.J. ; *Jeffries v. Alexander*, 8 H. L. C. at p. 624, and *Hannant v. Foulger*, 8 B. & S. at p. 430, per Blackburn, J. ; *People v. Utica Insurance Co.*, 15 Johnson, at p. 390, per Spencer, J.

an Act of Parliament by a judicial construction founded on the mere fact that the remedy provided is more extensive than the evil to be cured. It is enough to say, in general terms, on this doctrine, that the evil is but the motive for legislation, and the remedy may, both consistently and wisely, be extended, beyond the mere cure of that evil, to every provision which the most comprehensive view of the law, the state of manners, and of society at large may appear to render expedient" (e).

Where, indeed, the enacting words are not clear, where they are vague or ambiguous, where a recital that has been carefully limited to one particular evil is followed by words which cannot properly receive their widest meaning, the preamble must not be disregarded. This qualification is allowed in most of the cases already cited, and is fully stated by Channell, B., in the following passage:—"If, then, the words of the enacting clause, taken together, are words admitting, according to their natural import, of but one meaning, they must prevail, notwithstanding any argument to the contrary otherwise derivable from the preamble. If, on the other hand, the words are not so clear and explicit as to admit of but one clear and distinct meaning, but reasonable effect may be given to the words used in the enacting clauses by applying to them another meaning, then, I apprehend, that the preamble may be looked to to throw light on the subject" (f).

Unless
they are
vague
or am-
biguous.

(e) *Fellowes v. Clay*, 4 Q. B. at p. 349. See also *R. v. Marks*, 3 East, at p. 165, per Lawrence, J.

(f) *Hughes v. Chester and Holyhead Rail. Co.*, 1 Drew. & Sm. at

Instances
in which
enacting
words have
gone
beyond
preamble.

In the following cases it has been held that clear and general words of enactment were not to be restrained by the preamble. The 37 Geo. III. c. 123, recited that evil-disposed persons had attempted to seduce others from their duty and allegiance to His Majesty, and to incite them to acts of mutiny and sedition. The Act then made it a felony for any one to administer an oath or engagement not to reveal or discover any unlawful combination or conspiracy. It was held that the words of the Act were not restricted by the preamble to combinations or conspiracies for the purpose of mutiny or sedition, but extended to all combinations and conspiracies (*g*). The 3 Jac. I. c. 10, recited that subjects were charged and burthened in conveying to the gaol felons and other malefactors punishable by imprisonment, and enacted that every person committed to the county gaol for any offence or misdemeanour should bear his own charges if he could, and that if he could not they should be defrayed by the parish where he was apprehended. This enactment was not confined by the preamble to cases in which the person apprehended was committed for trial in the ordinary course of criminal proceedings, but extended to the case of a deserter (*h*). The 13 Eliz. c. 10, recited that ecclesiastics had made deeds of gift of their goods and chattels, with intent to defeat and defraud their successors. The third section of the

p. 536, 31 L. J. Ch. at p. 100. See also *Mason v. Armitage*, 13 Ves. at p. 36, *per* Lord Erskine, L.C.

(*g*) *R. v. Marks*, 3 East, 157.

(*h*) *R. v. Pierce*, 3 M. & S. 61.

Act avoided all leases, gifts and grants by any Dean and Chapter which were made for a longer term than was mentioned in the Act. It was decided that these general words were not restrained by the preamble to leases, gifts and grants made with intent to defeat or defraud, but extended to all leases exceeding the term specified (*i*).

The preamble of the 53 Geo. III. c. 206, stated that difficulties had arisen, and might arise, in bringing actions and suits for recovering debts and enforcing obligations due to the Hope Assurance Company, and the Act provided that the Chairman of the Company might, in his own name, bring actions for recovering any debts or enforcing any claims due to the company. Under these words it was held that an action for a libel upon the company might be brought in the name of its chairman (*k*). It was recited by the preamble of the 24 Geo. II. c. 40, that immoderate drinking of spirits by the lower classes had increased by reason of the number of licences. The twelfth section of the Act provided that no action should be brought in respect of liquors unless a debt of twenty shillings should have been contracted at one time. This section was held to extend to a case where a publican had bought liquor for re-sale, and was not confined by the preamble to sales for the purpose of consumption by the purchaser (*l*). The Carriers' Act, 11 Geo. IV. and 1 Will. IV. c. 68, refers in its preamble to the practice of sending "articles of

(*i*) *Dean of York v. Middleburgh*, 2 Y. & J. 196.

(*k*) *Williams v. Beaumont*, 10 Bing. 260.

(*l*) *Hughes v. Done*, 1 Q. B. 294.

great value in small compass," and protects carriers from liability for various articles above a specified value. Glass is one of the articles mentioned in the Act, and it was held that a looking-glass came within that description, although it was not an article of great value in small compass (*m*). The 14 Geo. III. c. 78, recited that it was expedient to make provisions with respect to buildings in London and Westminster, and section 83 provided for the application of insurance money to the rebuilding of houses which had been burnt down. It was held that this section applied to all parts of England, and that a reference in the preamble to certain local boundaries did not limit the application of an enactment aimed at a general and universal evil (*n*). In one case the effect of the enactment was in direct opposition to the preamble. The 54 Geo. III. c. 159, recited that it was expedient to extend the 19 Geo. II. c. 22, yet it was held that, in spite of the preamble, the later of these two Acts repealed the earlier (*o*).

Effect of
recital
similar to
that of
preamble.

The cases already quoted were all decided upon the effect of the general clause prefixed to the whole of a statute, and properly called the preamble. Sometimes, however, a similar clause is prefixed to one section or to a group of sections, and it may then be distinguished by the name of the recital. The effect of the recital is much the same as the effect of the preamble, and the figure

(*m*) *Owen v. Burnett*, 2 Cr. & M. 353.

(*n*) *Ex parte Gorely, re Barker*, 4 De Gex, Jones & Smith, 477;
34 L. J. Bankruptcy, 1.

(*o*) *Michell v. Brown*, 1 E. & E. 267.

of speech by which Dyer, C.J., and Lord Coke described the preamble has been applied to the recital by Willes, J. (*p*). The question whether general words of enactment in a section are to be limited by its recital has arisen in more than one case. Thus section 26 of 5 Geo. IV. c. 84, recited that felons under sentence of transportation had sometimes received remissions of their sentence, and had by their industry acquired property which it was expedient to protect. The same section enacted that every felon who had received any such remission of sentence might sue for the recovery of any property acquired since his conviction. It was held that the enacting words of the section were not limited by the recital, and that an action might be brought to recover any property acquired after conviction, and not merely such as had been acquired by industry (*q*).

In other cases, however, the enacting words of a section have been restrained by its recital. The fifth section of 11 & 12 Vict. c. 44, recited that it would conduce to the administration of justice, and render more effective and certain the performance of the duties of justices, and give them protection in the performance of the same, if some simple means were devised by which the legality of any act to be done by such justices might be considered by a Court of competent jurisdiction, and such justice enabled and directed to perform it without risk of an action. The section then enacted that in all cases where a justice refused to

Instances
in which
enacting
words
have been
restrained
by a
recital.

(*p*) *Earl of Shrewsbury v. Beazley*, 19 C. B. N. S. at p. 681.

(*q*) *Gough v. Davies*, 2 K. & J. 623.

do "any act," an application might be made for a rule calling upon him to show cause why he should not do it. The Court of Queen's Bench held that the words "any act" must be restrained by the recital, and must be taken to mean any act against the consequences of which a justice needed protection (r). So, too, section 18 of 11 Geo. II. c. 19, recited that great inconveniences might happen to landlords, where tenants, having power to determine their leases, gave notice to quit, and yet refused to deliver up possession. It was then enacted that if a tenant gave notice to quit at a certain time and did not deliver up possession accordingly, he should pay double rent. It was held that these provisions applied only to valid notices to quit, and not to notices to quit in which the landlord was not bound to acquiesce (s). Again, the fourth section of 24 & 25 Vict. c. 75, recited that doubts had arisen whether boroughs with separate commissions of the peace, but without separate quarter sessions, were towns corporate within the Alehouse Licensing Act (9 Geo. IV. c. 61), so as to give the justices of such boroughs control over the granting or withdrawing licences. The section proceeded to declare that in the construction of the Alehouse Licensing Act the words "county or place" included every borough having a separate commission of the peace, though it might not have a separate Court of Quarter Sessions. One of the provisions of the Alehouse Licensing Act was that any justice before whom a penalty

(r) *R. v. Percy*, L. R. 9 Q. B. 64.

(s) *Johnstone v. Huddleston*, 4 B. & C. 922, 936.

under that Act was recovered, might award part of it to the treasurer of the "county or place" for which he acted. It was held that a justice of a borough, which had a separate commission of the peace but not a separate Court of Quarter Sessions, had no power to award any part of the penalty to that borough. The recital of the section which applied the provisions of the Alehouse Licensing Act to such boroughs showed that the single object of the section was to meet the case of granting licences, and therefore the words "county or place" did not include such a borough for the purpose of penalties being awarded to its treasurer (*t*).

The cases in which a similar effect has been given to the preamble are not so numerous. Where the 17 Geo. III. c. 26, referred in its preamble to "the pernicious practice of raising money by the sale of life annuities," and enacted that grants of life annuities should be registered, it was held that the object of the Act as disclosed by the preamble was to prevent hard bargains, and, therefore, the enactment did not apply to annuities granted for a consideration which was not pecuniary (*u*). It was held, too, that the Annuity Act (53 Geo. III. c. 141) being an Act *in pari materia* with the Act 17 Geo. III. c. 26, and having the same objects in view, must be read as if the preamble of the earlier Act had been virtually incorporated with it, and must be limited accordingly (*x*). It may be difficult to reconcile the principle laid down

Instances
of enacting
words
being re-
strained by
preamble.

(*t*) *Winn v. Mossman*, L. R. 4 Ex. 292.

(*u*) *Crespigny v. Wittenoon*, 4 T. R. 790.

(*x*) *Blake v. Attersoll*, 2 B. & C. 875; *Evatt v. Hunt*, 2 E. & B. 374.

in the last two cases with that established by the House of Lords in a much later decision, where it is said that if a second Act is passed to aid the application of one which had gone before, the enacting words of the second Act are not to be confined by the preamble of the first (*y*).

Conflicts
of opinion.

But there are other cases in which graver and more direct conflicts have arisen. The preamble of the Tithe Prescription Act (2 & 3 Will. IV. c. 100) ran thus:—"Whereas the expense and inconvenience of suits instituted for the recovery of tithes may and ought to be prevented by shortening the time required for the valid establishment of claims of a *modus decimandi*, or exemption from or discharge of tithes;" and the enactment was that "all claims of or to any exemption from or discharge of tithes shall be sustained and deemed good and valid in law upon evidence showing the enjoyment of the land without payment or render of tithes for the full period of thirty years." It was held by Wigram, V.-C., that the generality of the enacting words was limited by the preamble to cases where, before the passing of the Act, an exemption could have been shown, and that the effect of the enactment so limited was not to create a new exemption, but to shorten the time formerly required for an exemption (*z*). The question then came before the Court of Queen's Bench, and the judges were equally divided, Patteson and Coleridge, JJ., agreeing with the Vice-Chancellor, while Lord Denman, C.J., and Williams, J., held

(*y*) *Copland v. Davies*, L. R. 5 H. L. 358, 378, 389.

(*z*) *Salkeld v. Johnston*, 1 Hare, 196.

that the enacting words could not be cut down, and that the exemption was general (*a*). A similar division of opinion occurred in the Court of Common Pleas, where Tindal, C.J., and Cresswell, J., adopted, while Coltman and Erle, JJ., rejected, the view of the Vice-Chancellor (*b*). But the Court of Exchequer unanimously decided that the enacting words could not be cut down by the preamble (*c*), and the opinion which had thus received the sanction of the majority of the judges was adopted finally by Lord Chancellor Cottenham (*d*). All the learning that can be collected on the subject of the preamble, and of its effect on the enacting clauses, all that can be said for and against either contention raised in those cases, will be found in the elaborate judgments pronounced by the judges by whom those cases were decided. It is sufficient here to record the controversy without seeking to take part in it.

In earlier times a less serious conflict had arisen between Lord Chancellor Cowper on the one hand, and Lord Hardwicke, L.C., and Parker, C.B., on the other, as to the effect of a recital in the 21 Jac. I. c. 19. This recital was that "it often falls out that many persons before they become bankrupts do convey their goods to other men upon good consideration, yet do still keep the same and are reputed the owners thereof." Then followed the enactment which has been repeated in so many

(*a*) *Fellowes v. Clay*, 4 Q. B. 313.

(*b*) *Salkeld v. Johnston*, 2 C. B. 749.

(*c*) *Salkeld v. Johnston*, 2 Ex. 256.

(*d*) *Salkeld v. Johnston*, 1 Mac. & G. 242.

Bankruptcy Acts and has led to so many decisions, that goods in the order and disposition of bankrupts with the consent of the true owner should be liable to the bankrupts' debts. Upon these words the question arose whether the enactment extended to all goods, or was restrained by the preamble to such goods as had originally been the property of the bankrupt. Lord Cowper, L.C., took the former view (*e*); and the words which are attributed to him are worth quoting: "I can by no means allow of the notion that the preamble shall restrain the operation of the enacting clause; and that because the preamble is too narrow and defective, therefore the enacting clause which has general words shall be restrained from its full latitude and from doing that good which the words would otherwise and of themselves import; which (with some heat) his Lordship said was a ridiculous notion" (*f*). This opinion was not shared by Lord Hardwicke, L.C., or by Parker, C.B., before whom the same question was afterwards discussed, and both of whom considered that the enacting words in this case ought to be limited by the recital (*g*). But the actual point was not decided in either of these cases, and when it came before the Court of King's Bench twenty-five years later, Lord Mansfield, C.J., delivered the unanimous judgment of that Court in accordance with the opinion of Lord Cowper, to the effect that the

(*e*) *Copeman v. Gallant*, 1 P. Wms. 314.

(*f*) *Copeman v. Gallant*, 1 P. Wms. at p. 320.

(*g*) *Ryall v. Rolle*, 1 Atk. 165, reported as *Ryall v. Rowles*, 1 Ves. Sen. 348.

enacting words of 21 Jac. I. c. 19, were not restrained by the recital (*h*).

In another instance the preamble was more fortunate, and came out of the judicial conflict victorious over the enactment. The 25 Geo. II. c. 3, recited that by the Statute of Frauds devises and bequests of lands were required to be executed in a certain manner, and that doubts had arisen who were to be deemed legal witnesses. It then enacted that if any person should attest "any will or codicil" by which any legacy was given to him, such legacy should be void. It was held by Sir William Grant, M.R., that the words of the Act extended to all wills and codicils, and were not restrained by the preamble to wills of real estate (*i*). But it was afterwards decided by Sir John Nicholl, that the enactment was so restrained by the preamble (*k*), and his decision was affirmed by the High Court of Delegates (*l*), and was followed by Sir John Leach, M.R. (*m*) and Sir L. Shadwell, V.-C. (*n*).

In addition to what has been said already with regard to the part of the statute now under consideration, we may refer to the suggestion of Lord Abinger, C.B., that the preamble may extend, although it cannot restrain, the effect of a particular clause (*o*). In one instance the enacting words of a section were materially extended by its

Preamble
or recital
may
extend
enacting
words.

(*h*) *Mace v. Cadell*, 1 Cowp. 232.

(*i*) *Lees v. Summersgill*, 17 Ves. 508.

(*k*) *Brett v. Brett*, 3 Addams, 210.

(*l*) 1 Hagg. Eccl. Cas. 58 (note).

(*m*) *Emanuel v. Constable*, 3 Russ. 436.

(*n*) *Foster v. Banbury*, 3 Sim. 40.

(*o*) *Walker v. Richardson*, 2 M. & W. at p. 889.

recital. The twelfth section of 17 Geo. II. c. 38, recited that great sums were lost by parishes owing to persons removing without paying rates, and enacted that persons removing and those coming in should be liable to pay rates in proportion to the time during which they occupied the premises. It was held that as the object of the section appeared from the recital to be the protection of the parish, an occupier who removed was liable for the poor rate until the time when a new tenant entered (*p*). Another suggestion to which some reference may be made is contained in the words of an Irish judge, that "the preamble of an Act is not to control enactments containing something essentially different from the preamble, but at the same time it is properly resorted to where we find the enacting parts are all connected with the preamble and with the mischief there recited to exist" (*q*).

CLAUSES OR SECTIONS.

Statutes
are now
divided
into sec-
tions.

The division of Acts of Parliament into sections, which was formerly described as "a mere arbitrary thing" (*r*), and one which was not warranted by the Parliament roll (*s*), has now received legislative sanction. By the 13 & 14 Vict. c. 21, s. 2, it is provided that "all Acts shall be divided into

(*p*) *Edwards v. Rusholme*, L. R. 4 Q. B. 554.

(*q*) *Mitchell v. Blake*, 1 Hud. & Br. at p. 200, *per* Jebb, J.

(*r*) *R. v. Newark, Inhabitants*, 3 B. & C. at p. 63, *per* Littledale, J.

(*s*) *Wells v. Iggulden*, 3 B. & C. at p. 189, *per* Bayley, J.; *R. v. Threlkeld, Inhabitants*, 4 B. & Ad. at pp. 235, 236, *per* Parke, J.

sections if there be more enactments than one, which sections shall be deemed to be substantive enactments without any introductory words." But the rule which is introduced by this statute does not alter the principle that the whole of each Act must be considered in all questions of construction, or render any one section in an Act independent of the others. All sections, indeed, are not to be construed alike merely because they form part of one statute. "There is no impropriety," says Best, C.J., "in putting a strict construction on a penal clause, and a liberal construction on a remedial clause, in the same Act of Parliament" (t).

Where, however, there are sections in an Act of Parliament which are inconsistent with each other, one must necessarily give way, and the question sometimes arises whether one section repeals another section in the same Act, or merely modifies some of its provisions. Such sections are to be taken together, so that, if possible, some effect may be given to each. "It is," says James, L.J., "a cardinal principle in the interpretation of a statute, that if there are two inconsistent enactments it must be seen if one cannot be read as a qualification of the other" (u). As a general rule the earlier section is controlled by the later. Thus the words of the first section of the Prescription Act (2 & 3 Will. IV. c. 71), which were large enough to include rights claimed in gross, were restrained by the words of the fifth section (x). So a section

Incon-
sistent
sections to
be recon-
ciled if
possible.

(t) *Short v. Hubbard*, 2 Bing. at p. 355.

(u) *Ebbs v. Boulnois*, L. R. 10 Ch. at p. 484.

(x) *Shuttleworth v. Le Fleming*, 19 C. B. N. S. 687.

authorising a general rate in a parish upon the owners or occupiers of all houses, was controlled by a subsequent section referring to the existence of charitable institutions which did not contribute to the exigencies of the parish, and providing that no settlement should be acquired by residence in such institutions. It was held that the effect of this later section was to restrain the general provisions of the earlier section, and to exempt such institutions from liability to be rated (*y*). But if the earlier section contains specific and precise directions, a later section, which is couched in general language, and which is at variance with those special provisions, will not deprive them of their full force and effect (*z*). “Wherever there is a particular enactment and a general enactment in the same statute, and the latter taken in its most comprehensive sense would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply” (*a*). “The rule is where a general intention is expressed, and the Act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception” (*b*).

Difficulty
of recon-
ciling
them.

The desire which is felt by the Courts to reconcile two inconsistent sections in one Act, instead of

(*y*) *R. v. St. George's, Southwark*, 10 Q. B. 852, 863.

(*z*) *De Winton v. Mayor of Brecon*, 26 Beav. 533, 543.

(*a*) *Pretty v. Solly*, 26 Beav. at p. 610, *per* Romilly, M.R., who cites *Standen v. University of Oxford*, Sir W. Jones, 17, and *Bonham's Case*, 8 Rep. 118 b.

(*b*) *Churchill v. Crease*, 5 Bing. at p. 180, *per* Best, C.J.

declaring the later section a repeal of the earlier, was clearly shown in one case where no little ingenuity was needed to effect that purpose. Section 119 of the London City Small Debts Extension Act, 1852, provided that if a plaintiff brought in the Superior Courts an action which might have been tried in the Court held under the provisions of that Act, he should have no costs unless he recovered more than £50 in contract, or £5 in tort. Section 120 provided that if a plaintiff sued in a Superior Court, and recovered less than £20 in contract, or £5 in certain specified actions of tort, he should have no costs, and no suggestion need be entered on the record to deprive him of them. It was held that as both the sections received the Royal Assent at the same time, it could not be supposed that one was intended to repeal the other if they could possibly be reconciled, and that effect might be given to both the sections by considering that under section 120 a plaintiff was deprived of costs without a suggestion being entered on the record, but that he was not deprived of costs by section 119, unless a suggestion was entered (*c*). In another case, where two sections showed a similar inconsistency, the Court declined to follow this precedent, and held that the later section repealed the earlier (*d*).

The marginal notes which are appended to the several sections form no part of those sections, or of the statutes themselves, so as to throw light

Marginal
notes no
part of
sections.

(*c*) *Castrique v. Page*, 13 C. B. 458.

(*d*) *Re Holt*, L. R. 4 Q. B. D. 29, referred to more fully in the chapter on Repeal.

upon questions of construction (*e*). They are merely abstracts of the clauses intended to catch the eye (*f*), and to make the task of reference easier and more expeditious. Although in one case Jessel, M.R., gave effect to a marginal note, and declared that such notes formed part of Acts of Parliament, and had within his own knowledge been the subject of motion and amendment (*g*), his attention does not seem to have been called to the clear and positive language of Willes, J. (*h*), and the Court of Appeal has dissented from his opinion (*i*). In the last case Baggallay, L.J., said (*k*): "I never knew an amendment set down or discussed upon the marginal note to a clause. The House of Commons never has anything to do with the amendment of the marginal note. I never knew a marginal note considered by the House of Commons." Where, indeed, a marginal note, instead of being a mere abstract of a section, gave express directions as to the form of an order which it accompanied, and was on the margin of the Parliament roll, it was held to be a part of the Act of Parliament (*l*).

General
headings to
groups of
sections.

Sometimes a group of sections is preceded by a general heading, which, though introduced merely

(*e*) *Claydon v. Green*, L. R. 3 C. P. at p. 522, *per* Willes, J.; *Birt-whistle v. Vardill*, 7 Cl. & Fin. at p. 929, *per* Tindal, C.J.

(*f*) *Att.-Gen. v. G. E. Rail. Co.*, L. R. 11 Ch. D. at p. 465, *per* James, L.J.

(*g*) *Re Venour's Settled Estates*, L. R. 2 Ch. D. at p. 525.

(*h*) *Claydon v. Green*, L. R. 3 C. P. at p. 522.

(*i*) *Att.-Gen. v. G. E. Rail. Co.*, L. R. 11 Ch. D. 449.

(*k*) At p. 461.

(*l*) *R. v. Milverton*, 5 A. & E. 841.

for the purpose of aiding reference and of ear-marking a set of clauses so as to enable them to be readily incorporated in other Acts of Parliament (*m*), is considered part of the statute, and may materially affect its construction. Thus there was a group of sections in the Bankruptcy Act, 1849, 12 & 13 Vict. c. 106, to which a general heading was prefixed "with respect to transactions with the bankrupt." One of the sections under that heading was section 137, which enacted that a judge's order by consent, given by any trader who was defendant in a personal action, should be void, unless it was filed within twenty-one days. It was held that this section was confined by the general heading to traders who became bankrupt, and did not apply to all traders (*n*). So the words in section 94 of the Lands Clauses Consolidation Act (8 & 9 Vict. c. 18), "if any such land shall be so cut through and divided," do not refer to the land mentioned in the section immediately preceding, but to the land mentioned in the general heading to the group in which section 94 is included (*o*). Again, sections 6 to 24 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), are preceded by a general heading, "with respect to the construction of the railway and the works connected therewith." It was held that this heading so limited the words of the sections that the compensation which they provided applied only to the case of injury caused

(*m*) *Brand v. Hammersmith Rail. Co.*, L. R. 7 H. L. at p. 217, *per* Lord Cairns.

(*n*) *Bryan v. Child*, 5 Ex. 368.

(*o*) *E. C. Rail. Co. v. Marriage*, 9 H. L. C. 32.

by the construction, and not to the case of injury caused by the use, of the railway (*p*). Where, however, one of the sections in a group covered by a general heading obviously refers to a subject-matter which is separate and distinct from that specified in the heading and dealt with in the remaining sections, it must be construed without regard to the heading. Thus section 68 of the Lands Clauses Act (8 & 9 Vict. c. 18), which gives compensation where land is injuriously affected, forms one of a group prefaced by the words "with respect to the purchase and taking of lands otherwise than by agreement." It has been shown both by Lord Cranworth (*q*) and Lord Cairns (*r*) that this heading does not limit the effect of section 68, or render it "an enactment relating to the taking of lands by compulsion when it obviously has reference to no such purpose."

The interpretation clause.

Among particular sections, the one which of all others has occupied the time and attention of the Courts is the interpretation clause. Severe censures have been passed upon this section by some of the judges. It has been said that a very strict construction should be placed upon a section which declares that one thing shall mean another (*s*), that interpretation clauses embarrass rather than assist the Courts in their decisions (*t*), and frequently do

(*p*) *Brand v. Hammersmith Rail. Co.*, 7 B. & S. 1, L. R. 1 Q. B. 130, 2 Q. B. 223, 4 H. L. 171.

(*q*) *Broadbent v. Imperial Gas Co.*, 7 De G. M. & G. at pp. 447, 448.

(*r*) *Brand v. Hammersmith Rail. Co.*, L. R. 7 H. L. at p. 217.

(*s*) *Allsop v. Day*, 7 H. & N. at p. 463, *per* Pollock, C.B.

(*t*) *R. v. Cambridgeshire, Justices*, 7 A. & E. at p. 491, *per* Lord Denman, C.J.

a great deal of harm by giving a non-natural sense to words which are afterwards used in a natural sense without the distinction being noticed (*u*). "It has been very much doubted," says Lord St. Leonards, L.C., "and I concur in that doubt, whether these interpretation clauses, which are of modern origin, have not introduced more mischief than they have avoided, for they have attempted to put a general construction on words which do not admit of such a construction in the different senses in which they are introduced in the various clauses of an Act of Parliament" (*x*). Other judges have observed that the real purpose of an interpretation clause is to define the meaning of words when nothing else in the Act is opposed to the particular sense which is thus placed upon them. "When a concise term is used which is to include many other subjects besides the actual thing designated by the word, it must always be used with due regard to the true, proper, and legitimate construction of the Act" (*y*). An interpretation clause is not to receive "a rigid construction, is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances. It merely declares what persons may be comprehended within that term where the circumstances require that they should" (*z*). "An interpretation clause should be used for the purpose

(*u*) *Lindsay v. Cundy*, L. R. 1 Q. B. D. at p. 358, *per* Blackburn, J.

(*x*) *Dean of Ely v. Bliss*, 2 De G. M. & G. at p. 471.

(*y*) *Midland Rail. Co. v. Ambergate Rail. Co.*, 10 Hare, at pp. 369, 370, *per* Wood, V.-C.

(*z*) *R. v. Cambridgeshire, Justices*, 7 A. & E. at p. 491, *per* Lord Denman, C.J.

of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain " (a)

Not followed strictly.

Acting upon these principles, the Courts have in some cases given words a narrower and in others a more extended meaning than a literal compliance with the interpretation clause would warrant. The first of these constructions was placed upon the Statute of Limitations (3 & 4 Will. IV. c. 27), which provided that "rent" should extend to all rent, and that "land" should extend to tithes. It was held that the word "rent," when used in the Act, did not include rent reserved by lease (b), and that the word "land" did not include tithes as a chattel, but merely an estate in tithes (c). The second construction was placed upon the 15 & 16 Vict. c. 85. where an interpretation clause provided that the word "parish" should mean every place having separate overseers of the poor, and separately maintaining its own poor. It was held that the word parish, when used in the Act, was not confined to such places (d). Again, the Lands Clauses Act (8 & 9 Vict. c. 18) defined justices as meaning justices of the peace acting for the county or place where the matter requiring their cognisance arose. Section 33 of the Act required that before an arbitrator entered into the consideration of matters referred to him he should make a declaration in the presence of a justice. It was held that this

(a) *R. v. Pearce*, L. R. 5 Q. B. D. at p. 389, *per* Lush, J.

(b) *Grant v. Ellis*, 9 M. & W. 113.

(c) *Dean of Ely v. Bliss*, 2 De G. M. & G. 459.

(d) *R. v. Sudbury Burial Board*, E. B. & E. 264.

provision was not limited by the interpretation clause, and that such a declaration need not be made before a justice of the peace for the county where the lands to be taken were situated (*e*).

In other cases it has been considered that the Legislature has intentionally given words a more extended meaning than they would ordinarily receive. The interpretation clause sometimes provides that a certain word shall "include" a variety of things, and it is then held that this phrase is used by way of extension, and not as giving a definition by which other things are to be excluded (*f*). Thus where the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), provided that "ship" should include every description of vessel used in navigation not propelled by oars, it was held that a vessel propelled by oars was not excluded (*g*). It was declared by the Petroleum Act, 1868 (31 & 32 Vict. c. 56), that "petroleum" should include all such rock oil, &c., as gave off an inflammable vapour at a temperature of less than 100 degrees Fahrenheit. But petroleum itself was held to be within the Act, even if it did not give off an inflammable vapour below the specified temperature (*h*). To all such cases the words used by Blackburn, J., in reference to the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120),

"Include" used to extend, not to define.

(*e*) *Davies v. South Staffordshire Rail. Co.*, 2 L. M. & P. 599; 21 L. J. M. C. 52.

(*f*) *R. v. Kershaw*, 6 E. & B. at p. 1007; 26 L. J. M. C. at p. 23, per Erle, J.

(*g*) *Ex parte Ferguson*, L. R. 6 Q. B. 280, 291.

(*h*) *Jones v. Cook*, L. R. 6 Q. B. 505.

have a forcible application. "It does not follow that because the expression 'new street' is to include certain other things, we are to say it does not include its own natural meaning" (*i*). So, too, the Lands Clauses Act (8 & 9 Vict. c. 18) provided by the interpretation clause that the word sheriff in the Act should include under-sheriff. Section 39 enacted that where a warrant was issued to assess compensation, and the sheriff was interested in the matter in dispute, application was to be made to the coroner. It was held, however, that if the under-sheriff was interested in the matter in dispute, the warrant was to be issued to the sheriff and not to the coroner (*k*). Again, the Public Health Act, 1848 (11 & 12 Vict. c. 63), contains an interpretation clause by which the word "street" is to apply to and include any highway not being a turnpike road. It was held that a way which would properly be described in ordinary language as a street did not cease to be a street because it was part of a turnpike road, for the interpretation clause was not restrictive, but enlarged the ordinary meaning of the word street (*l*).

PROVISOES, SAVINGS AND EXCEPTIONS.

Saving
clause and
proviso

The saving clauses, provisoes, and exceptions, which are often contained in the sections of Acts

(*i*) *Pound v. Plumstead Board of Works*, L. R. 7 Q. B. at p. 194.

(*k*) *Worsley v. South Devon Rail. Co.*, 16 Q. B. 539.

(*l*) *Nutter v. Acerington Local Board*, L. R. 4 Q. B. D. 375.

of Parliament, next demand our attention. There ^{apparently identical.} does not appear to be any real distinction between a saving clause and a proviso. Each of them is, as Bayley, J., says of the latter (*m*), "something engrafted on a preceding enactment." Each is "merely an exception of a special thing out of the general things mentioned" in the statute (*n*). Each is "a limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate or the other be exercised unless in the case provided" (*o*). The office of each is to except some particular case from a general principle where from peculiar circumstances attending the case there would be some hardship if it were not excepted (*p*); to qualify, restrain, or otherwise modify the general language of an enacting clause, or to exclude some possible ground of misinterpretation that might exist if cases which the Legislature did not mean to include were brought within the statute (*q*).

While, however, these principles seem to apply ^{Suggested distinction between them.} equally to a proviso and to a saving clause, so that the two things might be considered identical in substance and differing only in name, one very marked distinction is made between them by some of the early writers. It is said that "where the

(*m*) *R. v. Taunton, St. James*, 9 B. & C. at p. 836.

(*n*) *Halliswell v. Corporation of Bridgewater*, 2 Anderson, at p. 192.

(*o*) *Voorhees v. Bank of U. S.*, 10 Peters, at p. 471.

(*p*) *Huidekoper's Lessee v. Burrus*, 1 Washington Circuit Court Reports, at p. 119.

(*q*) *Wayman v. Southard*, 10 Wheaton, at p. 30; *Minis v. U. S.*, 15 Peters, at p. 445, *per Story*, J.

proviso of an Act of Parliament is directly repugnant to the purview, the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers" (*r*). On the other hand, we are told that a saving clause directly repugnant to the purview is void; "as if the manor of which J. S. is tenant in fee simple is given to the King saving the estates of all persons, the estate of J. S. is not saved, because it would make the express gift to the King void" (*s*); and where the attainder of the Duke of Norfolk was declared to be void, saving the leases made by King Edward the Sixth, that saving was held inoperative (*t*).

Import-
ance and
effect of
proviso.

A proviso is of great importance when the Court has to consider what cases come within the enacting part of a section (*u*), and it is always to be construed with reference to the preceding parts of the clause to which it is appended (*x*). Thus where the 28th section of the 7 & 8 Vict. c. 96, ended with a proviso that no debtor should be imprisoned on any process for more than twelve calendar months for any debt incurred before the filing of his petition, in case a final order for protection from process was refused, it was held that this did not refer to all cases where the final order was refused, but only to such cases of refusal as were suggested in the preceding part of the section (*y*). The mere fact, indeed, that a proviso was printed as part of

(*r*) *Att.-Gen. v. Chelsea Waterworks*, Fitzgibbon, 195.

(*s*) *Case of Alton Woods*, 1 Rep. at p. 47.

(*t*) *Walsingham's Case*, Plowd. at p. 565.

(*u*) *Baines v. Swainson*, 4 B. & S. at p. 278, *per* Wightman, J.

(*x*) *Ex parte Partington*, 6 Q. B. at p. 653.

(*y*) *Ex parte Partington*, 6 Q. B. 649.

any one section did not, at the time when statutes were not divided into sections upon the roll, limit the effect or construction of the proviso (*z*). “The question whether a proviso in the whole or in part relates to and qualifies, restrains, or operates upon the *immediately* preceding provisions only of the statute, or whether it must be taken to extend in the whole or in part to all the preceding matters contained in the statute, must depend, I think, upon its words and import, and not upon the division into sections that may be made for convenience of reference in the printed copies of the statute” (*a*).

Where an enacting clause which is general in its language and objects is followed by a proviso, that proviso must be construed strictly (*b*). It cannot enlarge the words of the enacting clause, and therefore a proviso to the effect that ships of war belonging to the Crown should not pay a toll granted in respect of lighthouses, did not render other ships belonging to the Crown liable to pay that toll (*c*). “A saving clause,” said Wood, V.-C., “cannot be taken to give any right which did not exist already. ‘Saving’ means that it saves all the rights the party previously had, not that it gives him any new rights” (*d*). If a substantive enactment is expressly repealed, anything which is

Proviso or
saving
cannot
enlarge
enacting
words.

(*z*) *R. v. Threlkeld, Inhabitants*, 4 B. & Ad. at pp. 235, 236; *Wells v. Iggulden*, 3 B. & C. at p. 189, *per* Bayley, J.

(*a*) *R. v. Newark, Inhabitants*, 3 B. & C. at p. 71, *per* Holroyd, J.

(*b*) *U. S. v. Dickson*, 15 Peters, at p. 165, *per* Story, J.

(*c*) *Smithett v. Blythe*, 1 B. & Ad. 509.

(*d*) *Arnold v. Mayor of Gravesend*, 2 K. & J. 574, 591.

merely a proviso appended to it is repealed by implication (*e*).

Distinction between provisos and exceptions.

The substantial distinction between a proviso and an exception is that the former follows an enacting clause, and qualifies it in certain specified cases, while the latter is part of the enacting clause, and is of general application. If, therefore, an action, indictment, information, or conviction is based upon the words of any statute, a proviso need not be noticed by the plaintiff or prosecutor, but he must negative an exception. "Wherever," says Parke, B., "a statute inflicts a penalty for an offence created by it upon conviction before one or more justices of the peace, but there is an exception in the enacting clause of persons under particular circumstances, it is necessary to state in the information that the defendant is not within any of the exceptions. And it seems immaterial whether the exception be in the same section or in a preceding Act of Parliament referred to in the enacting clause. But where the exemption is contained in a proviso in a subsequent section or Act of Parliament, it is matter of defence, and, therefore, it is not necessary to state in the conviction that the defendant is not within the proviso" (*f*). Thus, where the Municipal Corporations Act (5 & 6 Will. IV. c. 76) imposed a penalty on any person acting as councillor after he became disqualified, but provided that no action for the penalty should be brought except by a burgess, it was held that,

(*e*) *Horsnail v. Bruce*, L. R. 8 C. P. at p. 385, *per* Bovill, C.J.

(*f*) *Thibault v. Gibson*, 12 M. & W. at p. 95, citing 1 Wms. Saund., 262 a.

although this proviso was contained in the same section as the enacting words, yet, as it was in a subsequent part of the section, the plaintiff need not state in his declaration that he was a burgess (*g*). But where 24 & 25 Vict. c. 99, enacted that whosoever without lawful authority or excuse, (proof whereof was to lie on the party accused,) had in his possession any die impressed with the resemblance of either side of any current coin, should be guilty of felony, it was held that, though the burden of proof was shifted, the lawful authority or excuse must be negatived in the indictment (*h*).

Even where it is provided that informations or complaints need not negative any exemption, exception, proviso, or condition, and that if they are negatived a prosecutor need not give any evidence in support of such an allegation, but the defendant must prove the affirmative, it has been held that an exception forming part of the enacting words of a statute must be negatived by a complainant. Thus, where the 11 & 12 Vict. c. 49, imposed a penalty on a licensed victualler selling drink on Sunday before a certain hour in the afternoon, except as refreshment for travellers, it was held that the burden of proving that liquor had been sold to persons who were not travellers was cast on the informer (*i*).

(*g*) *Simpson v. Ready*, 12 M. & W. 736, 739, 740.

(*h*) *R. v. Harvey*, L. R. 1 C. C. R. 284.

(*i*) *Taylor v. Humphries*, 17 C. B. N. S. 539. The same construction was put upon similar words in the 2 & 3 Vict. c. 47, *Davis v. Scrace*, L. R. 4 C. P. 172.

SCHEDULES.

Variance
between
Act and
Schedule;
the Act
prevails.

The only part of a statute which remains to be noticed is the schedule. If there is any variance or contradiction between the enacting parts of an Act and the forms contained in the schedule the enacting part must prevail, and "the form which is made to suit rather the generality of cases than all cases must give way" (*k*). The 8 & 9 Vict. c. 87, which was passed for the prevention of smuggling, enacted that an information might be laid before one justice, but could only be heard before two. Section 107 of the Act provided that all informations exhibited before any justice or justices of the peace for any offence against the customs should be drawn in the form or to the effect in the schedule annexed to the Act. All the forms in the schedule used the words "gives us, two of Her Majesty's justices of the peace, to understand." It was held, however, that the forms in the schedule did not override the provisions of the Act, and that an information might be laid which used the words "one of Her Majesty's justices of the peace" (*l*). In another case it is said that the schedule to an Act is not itself an enactment, though it may aid in explaining one which is doubtful (*m*). A form given in a schedule, especially if there is no reference to it in the body

(*k*) *R. v. Baines*, 12 A. & E. at p. 227.

(*l*) *R. v. Russell*, 13 Q. B. 237.

(*m*) *R. v. Epsom, Inhabitants*, 4 E. & B. at pp. 1008, 1012, *per* Lord Campbell, C.J.

of the Act, is merely an example (*n*), and is “only to be followed implicitly so far as the circumstances of each case may admit” (*o*). The positive words of one Act (2 W. & M., Sess. 1, c. 5, s. 2), providing that two sworn appraisers should value goods distrained for rent, were held not to be repealed by the schedule appended to 57 Geo. III. c. 93, which specified 6*d.* in the pound as the charge for appraisement, “whether by one broker or more” (*p*).

But in a few cases it has been declared that forms contained in the schedules to Acts of Parliament must be strictly followed, and that any departure from them was fatal. Thus where the words employed by the 13 Geo. III. c. 78, were “the forms in the schedule shall be used,” it was held that this was imperative, and an order by justices stopping up an old footpath was set aside for non-compliance with the form prescribed by the Legislature (*q*). So where the form of a certificate in the schedule to an Act for regulating the confinement of lunatics left a blank for the “street and number of house” where a medical examination took place, it was held that a certificate which stated only the name of a town was insufficient (*r*). So, too, it was decided by Wood, V.-C., and on appeal by Lord Campbell, L.C., that the forms of transfer and mortgage given by the Merchant

Where forms are imperative.

(*n*) *Hennah v. Whyman*, 2 C. M. & R. 239, *per* Parke, B.

(*o*) *Bartlett v. Gibbs*, 5 M. & G. at p. 96, *per* Tindal, C.J.

(*p*) *Allen v. Flicker*, 10 A. & E. 640.

(*q*) *Davison v. Gill*, 1 East, 64.

(*r*) *R. v. Pinder*, 24 L. J. Q. B. 148.

Shipping Act, 1854, must be substantially followed, though the Act did not contain negative words, or declare that transfers and mortgages in any other form should be null and void (s).

(s) *Liverpool Borough Bank v. Turner*, 1 J. & H. 159 ; 29 L. J. Ch. 827 ; 2 De G., F. & J. 502 ; 30 L. J. Ch. 379.

CHAPTER VII.

THE REPEAL OF STATUTES.

STATUTES may be repealed either by express words contained in later Acts of Parliament, or by implication.

Little need be said on the subject of express repeal. We have seen that it is within the power of any Parliament to repeal any of the Acts passed by its predecessors, and that it is not within the power of any Parliament to prevent the repeal of any of its own Acts, or to bind its successors. Formerly, however, by rules of both Houses, an Act could not be altered, or repealed, in the same session as that in which it passed, unless a clause was inserted expressly reserving such a power (*a*). But by Lord Brougham's Act, 13 & 14 Vict. c. 21, s. 1, "every Act to be passed after the commencement of this Act may be altered, amended or repealed in the same session of Parliament, any law or usage to the contrary notwithstanding."

Express
repeal of
statutes.

May be in
same ses-
sion as
enact-
ment.

Some further provisions with regard to repeal were made by the same statute. Before its passing the law was that if any statute was repealed by one of a later date, and the later statute was

Does not
revive
statutes
already
repealed.

(*a*) Dwaris, 530.

subsequently repealed, the first statute at once revived without any formal words for that purpose (b). The fifth section of the 13 & 14 Vict. c. 21, however, enacts that "where any Act repealing in whole or in part any former Act is itself repealed, such last repeal shall not revive the Act or provisions before repealed, unless words be added reviving such Acts or provisions."

Repealed Act remains in force till new provisions take effect.

The 6th section of the same Act provides that "wherever any Act shall be made repealing in whole or in part any former Act, and substituting some provision or provisions instead of the provision or provisions repealed, such provision or provisions so repealed shall remain in force until the substituted provision or provisions shall come into operation."

Repeal by implication.

A repeal by implication is effected when the provisions of a later enactment are so inconsistent with, or repugnant to, the provisions of an earlier enactment that the two cannot stand together. In that case the earlier enactment must give way to the later, according to the maxim, "*leges posteriores priores contrarias abrogant*" (c). "If two inconsistent Acts," says Lord Langdale, M.R., "be passed at different times, the last must be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. Every Act of Parliament must be considered with reference to the state of the law subsisting when it came into operation, and when it is to be applied; it cannot otherwise be

(b) 1 Blackstone, 90.

(c) 2 Inst. 685.

rationally construed. Every Act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment" (*d*).

Many instances may be given for the purpose of showing how statutes or parts of statutes are repealed by implication. It is laid down in an early case that the 33 Hen. VIII. c. 23, which enacted that persons examined before the King's Council might be tried for treason in any county where the King pleased, was repealed by 1 & 2 Phil. & Mary, c. 10, providing that all trials for treason should be had according to the course of the Common Law, and not otherwise (*e*). The Act 13 Geo. II. c. 28, exempted any harpooner in the Greenland fishery trade from impressment. It was held that this Act was repealed by 26 Geo. III. c. 41, which conferred the same exemption on any such harpooner whose name was entered in a particular list (*f*). So, too, the 17 Geo. II. c. 38, which gave an appeal to the next sessions, repealed the sixth section of the 43 Eliz. c. 2, which gave an appeal generally (*g*). An Act allowing all persons access to the books of a turnpike trust was repealed by another Act, which gave the power of inspecting such books to trustees or creditors of tolls (*h*). An

What is
inconsis-
tency be-
tween two
statutes.

(*d*) *Dean of Ely v. Bliss*, 5 Beav. at p. 582.

(*e*) *Foster's Case*, 11 Rep. at p. 63 a.

(*f*) *Ex parte Carruthers*, 9 East, 44.

(*g*) *R. v. Worcestershire Justices*, 5 M. & S. 457.

(*h*) *R. v. Trustees of Northleach and Witney Roads*, 5 B. & Ad. 978.

Act giving a person sued for anything done under its authority treble costs upon nonsuit, discontinuance or judgment in his favour, was held to be repealed by another Act which required notice of action, and gave costs to a successful defendant (*i*).

In one case an enactment to the effect that no action should be commenced after six months was held to have been repealed by a subsequent Act, providing that none should be commenced after three months (*k*); but elsewhere it was decided that the provisions of an Act giving justices a month's notice of action, were not inconsistent with those of another Act which gave justices and others twenty-one days' notice (*l*). The 9 Geo. IV. c. 61, enacted that where an appeal against the decision of a justice of the peace was dismissed, the Court might order the appellant to pay costs to the justice against whom the appeal was brought, and might commit the appellant for non-payment. It was held that this enactment was repealed by 11 & 12 Vict. c. 43, which made costs in cases of appeals against justices payable to the clerk of the peace, and the order for payment enforceable by distress and committal for three months in default of distress (*m*). Another section of the 9 Geo. IV. c. 61, required licences to victuallers to follow a form given in the schedule to the Act, and by that form the houses kept by victuallers were not to be open during the hours

(*i*) *Snelgrove v. Smart*, 12 M. & W. 135.

(*k*) *Burns v. Carter*, 5 Bing. 429.

(*l*) *Rix v. Borton*, 12 A. & E. 470.

(*m*) *R. v. Hellier*, 17 Q. B. 229.

of Divine service on Sundays. The 18 & 19 Vict. c. 118, prohibited the sale of beer, wine, or spirits between three and five on Sunday afternoons. It was held that this repealed the provisions in the licence, and that a victualler was not liable to a penalty for selling liquors between half-past two and three on a Sunday afternoon, although that time might fall within the actual hours of Divine service (*n*).

A provision in a private Act that the penalty imposed on a Gas Company for fouling a stream might be sued for by a common informer, was repealed by section 21 of the Gasworks Clauses Act, 1847, 10 & 11 Vict. c. 15, which enacted that such penalties should be sued for by the person injured (*o*). The 139th section of the Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), providing that the assignees of a bankrupt's estate should be chosen by such of the bankrupt's creditors as had proved debts to the amount of £10 and upwards, was held to be repealed by the 116th section of the Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), which assigned the choice of an assignee to the majority in value of the creditors who had proved their debts (*p*).

A Gas Company's Act provided that the gas supplied should be equal to twelve wax candles, and that the company should not charge more than 4s. per 1000 cubic feet. Subsequently the Metro-

(*n*) *R. v. Whiteley*, 3 H. & N. 143.

(*o*) *Purry v. Croydon Gas Co.*, 11 C. B. N. S. 579; 15 C. B. N. S. 568.

(*p*) *Ex parte Moss*, L. R. 3 Ch. 29.

polis Gas Act, 1860 (23 & 24 Vict. c. 125), required the quality of the gas to be raised to twelve sperm candles, and allowed gas companies to charge as much as 5s. 6d. per 1000 cubic feet if they elected to adopt the provisions of the Act. It was held that the earlier Act was repealed by the later, and that, in spite of the express prohibition in the earlier Act, a company electing to adopt the Metropolis Gas Act, 1860, might charge more than 4s. per 1000 cubic feet (*q*).

The City Sewers Act, 1848, gave the Commissioners of Sewers power to name and number streets. The Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), gave the same power to the Metropolitan Board of Works. It was held that the first Act was repealed by the second (*r*). "Where two statutes," said Erle, C.J. (*s*), "give authority to two public bodies to exercise powers which cannot consistently with the object of the Legislature coexist, the earlier must necessarily be repealed by the later statute." "The same objects are dealt with in both Acts of Parliament," said Willes, J. (*t*). "The powers conferred by the two are substantially, if not strictly, the same. So soon as you find the Legislature is dealing with the same subject-matter in both Acts, so far as the later statute derogates from and is inconsistent with the earlier one, you are under the necessity of saying that the Legislature did intend in the later

(*q*) *Great Central Gas Consumer's Co. v. Clarke*, 11 C. B. N. S. 814 ; 13 C. B. N. S. 838.

(*r*) *Daw v. Metropolitan Board of Works*, 12 C. B. N. S. 161.

(*s*) At p. 174.

(*t*) At p. 179.

statute to deal with the very case to which the former statute applied."

A repeal by implication has been effected even where two inconsistent enactments have been passed in the same session, or where two parts of the same Act have proved repugnant to each other. An Act which received the royal assent on the 1st of June, 1829, provided that the roads in a parish were to be repaired by certain commissioners. Another Act which received the royal assent on the 19th of June, 1829, enacted that the same roads should be kept in repair by the parishes in which they were situated. Both the Acts were to come into operation on the 1st of January, 1830. It was held that the one which last received the royal assent must prevail, and must, so far as the two Acts were inconsistent, be a repeal of the other (*u*). So, too, section 42 of the 3 & 4 Will. IV. c. 27, enacted that no arrears of rent should be recovered by any distress, action, or suit, "but within six years next after" they should have become due. It was held that, if this section referred to rent due on an indenture of lease, it was repealed by the third section of 3 & 4 Will. IV. c. 42, which fixed twenty years as the limitation for actions of debt for rent due under an indenture of demise (*x*). In the United States it was held that an Act which was approved on the 9th of December, 1837, and which provided for a plea in abatement if all co-contractors were not joined as defendants, was repealed by another Act which was approved on the 18th of

Of statute by another passed in the same session.

(*u*) *R. v. Middlesex Justices*, 2 B. & Ad. 818.

(*x*) *Paget v. Foley*, 2 Bing. N. C. 679.

December, 1837, and which allowed a plaintiff to bring an action against as many co-contractors as he thought proper (*y*). Where, however, one Act provided that deeds should be registered in the probate registry for the county or city where the property was situated, and another Act, passed the same day, provided that deeds might be registered in the county, it was held that the two Acts could stand together, and that deeds relating to lands in a city might be registered in a county registry (*z*).

Of one
part of an
Act by
another.

An instance of the repeal of one section in an Act of Parliament by a subsequent section in the same statute is found in a case decided upon the words of the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60). Section 22 of this Act provided that all disputes between a society and its members should be decided in the manner directed by the rules of the society. Section 30 enacted as follows: "The provisions of the present section apply only to friendly societies and except as after mentioned industrial assurance companies receiving contributions by means of collectors at a greater distance than ten miles from the registered office of the society." One of the provisions of section 30 was that disputes between societies and their members should be settled by a County Court, or Court of summary jurisdiction, notwithstanding any provisions to the contrary in the rules of such societies. The question arose whether section 30 of the Act repealed section 22 as to all friendly societies,

(*y*) *Johnson v. Byrd*, Hempstead, 434.

(*z*) *Beals v. Hale*, 4 Howard, 37.

or extended only to friendly societies receiving contributions by means of collectors. It was held by the Queen's Bench Division that the provisions of section 30 applied to all friendly societies, and was to that extent a repeal of the twenty-second section (a).

A repeal by implication of a statute by another passed in the same session, or of a section in an Act of Parliament by a subsequent section in the same Act, will only be presumed in an extreme case. "How can we say," remarked Jervis, C.J., in a case where two succeeding sections were inconsistent with each other, "that the one provision is repealed by the other when both received the royal assent at the same moment? Seeing here are two sections in the same Act of Parliament immediately following one another, which, though apparently conflicting, received the royal assent at the same moment, we are bound if it be possible to give effect to both" (b). Again, where the question arose whether or no the 2 & 3 Will. IV. c. 100, which gave a limitation of sixty years in the case of tithes, was repealed by the enactment in 3 & 4 Will. IV. c. 27, that no action should be brought after twenty years to recover any land, a term which by the interpretation clause extended to tithes, Lord St. Leonards, L.C., observed: "It would require a very strong and clear case to enable the Court to say

(a) *Re Holt*, L. R. 4 Q. B. D. 29. Subsequently 42 Vict. c. 9 was passed to declare that section 30 of the Friendly Societies Act, 1875, was limited to friendly societies receiving contributions by means of collectors at a greater distance than ten miles from their registered office.

(b) *Castrique v. Page*, 13 C. B. at pp. 461, 464.

that a statute passed so recently after a former one which does not profess to repeal a leading enactment in that former statute, should by implication have that effect " (c).

Not to be
presumed
without
great care.

Even where a longer interval than a single session has elapsed between the passage of two statutes which appear to be inconsistent, the greatest care will be taken, and their provisions will be most strictly scrutinised, before the Court comes to the conclusion that the earliest of the two is repealed by implication (d). The Legislature is presumed to know of the existence of the earlier statute, and if a repeal had been intended it might have been the subject of express enactment. Unless, therefore, two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied. Thus in the case already cited with regard to the limitation of actions brought for tithes, after Lord Langdale, M.R., had held that the Act which gave a sixty years' limitation was repealed by the Act fixing twenty years (e), the Court of Exchequer (f) and Lord St. Leonards, L.C. (g), both decided that the two Acts could stand together, as one related to tithes as a chattel, "the fruit of the estate in tithes," while the other related to the estate itself.

Where it
will not be
presumed.

Similar decisions were pronounced upon some of the statutes intended to discourage frivolous liti-

(c) *Dean of Ely v. Bliss*, 2 De G., M. & G. at p. 470.

(d) *Escott v. Mastin*, 4 Moo. P. C. at p. 130, *per* Lord Brougham ; *Chorlton v. Tonge*, L. R. 7 C. P. at p. 183, *per* Keating, J.

(e) *Dean of Ely v. Bliss*, 5 Beav. 574.

(f) *Dean of Ely v. Cash*, 15 M. & W. 617.

(g) *Dean of Ely v. Bliss*, 2 De G., M. & G. 459.

gation. The 21 Jac. I. c. 16, s. 6, provided that in actions for slander if the verdict was less than forty shillings the plaintiff should not recover more costs than damages. It was held that this section was not repealed by 3 & 4 Vict. c. 24, s. 2, which did not allow the plaintiff costs in an action of trespass where the verdict was under forty shillings except on a certificate that the action was brought to try a right (*h*). Nor was this provision of the 3 & 4 Vict. c. 24, repealed by the County Courts Act, 1850 (13 & 14 Vict. c. 61, ss. 11 & 12), which deprived a plaintiff of costs unless he recovered £5, or procured a certificate to the effect that there was sufficient reason for suing in a superior Court (*i*). The 3 & 4 Vict. c. 85, s. 6, requires partitions between chimneys and flues to be of a certain thickness. It was held that this section was not repealed by a Local Act, which provided that circular chimneys should be built with earthenware pipes (*k*).

The effect of a repeal by implication is limited ^{Limited to part which is repugnant.} to that part of an earlier statute which is repugnant to or inconsistent with a later statute, and does not extend to the earlier statute generally, or even to such parts as may be in juxtaposition with the part repealed. It had been suggested by Lord Abinger, C.B. (*l*), that if the 55 Geo. III. c. 137, s. 6, imposing a penalty of £100 on any

(*h*) *Evans v. Rees*, 9 C. B. N. S. 391; *Marshall v. Martin*, L. R. 5 Q. B. 239.

(*i*) *Powle v. Gandy*, 7 C. B. N. S. 556.

(*k*) *Hill v. Hall*, L. R. 1 Ex. D. 411.

(*l*) *Henderson v. Sherborne*, 2 M. & W. 236.

parish officer who supplied for his own profit any goods for the support of the poor, referred to the case of a parish officer deriving a profit from goods supplied to an individual pauper, that enactment was repealed by 4 & 5 Will. IV. c. 76, s. 77, which imposed a penalty of £5 for any such dealings with an individual pauper. A later case, however, decided that if there was such a repeal, it was not a repeal of the enactment generally, but only of so much of the enactment as contemplated a supply of goods to an individual pauper (*m*).

Modifica-
tion of
earlier
statute
substi-
tuted for
repeal by
implica-
tion.

Inconsistency between two statutes is sometimes so treated that a repeal by implication is avoided, and that the later statute is regarded as modifying the earlier statute, or taking certain things out of its operation. Thus it was enacted by 29 Eliz. c. 4, s. 1, that it should not be lawful for any sheriff to take more than the poundage given by that Act for serving or executing any extent or execution, on pain of forfeiting treble damages to the party grieved. The Act 7 Will. IV. & 1 Vict. c. 55, s. 2, enacted that it should be lawful for sheriffs to take such fees as should be allowed under the authority of the judges, and made a sheriff who exacted more than those fees punishable for a contempt. It was held that the effect of the later Act was to exempt the taking of the fees allowed by the judges from the operation of the penal clause in the earlier statute, but not to repeal the earlier statute (*n*). Again, Lord Campbell's Act,

(*m*) *Robinson v. Emerson*, 4 H. & C. 352.

(*n*) *Pilkington v. Cooke*, 16 M. & W. 615; *Wrightup v. Greenacre*, 10 Q. B. 1.

9 & 10 Vict. c. 93, imposed an unlimited liability on persons who caused death by their negligence. The Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104, s. 504), limited the liability of shipowners for loss of life resulting from improper navigation. This section was repealed and a new limit assigned by the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63). It was contended that Lord Campbell's Act was repealed as far as shipowners were concerned by the Merchant Shipping Act, 1854, and that when this was repealed in its turn, as Lord Campbell's Act was not revived, no Act existed which imposed any liability on shipowners. The Court, however, held that Lord Campbell's Act was not repealed by the Merchant Shipping Act, 1854, but was merely modified, and no revival of it was needed to preserve the liability of shipowners (o).

The difference between a repeal by implication and the modification of an earlier statute is shown by some cases which were decided upon the County Courts Act, 1850 (13 & 14 Vict. c. 61). The Statute of Gloucester, 6 Edw. I. c. 1, gave a plaintiff a right to his costs in all cases in which he recovered damages. By the 11th section of the County Courts Act, 1850, it was provided that if a plaintiff recovered less than a specified amount he should have judgment for that sum only and no costs, unless in certain cases a certificate was granted by the judge at the trial, or an order made by the Court or a judge. A question arose whether

(o) *Glabholm v. Barker*, L. R. 1 Ch. 223.

this enactment repealed the Statute of Gloucester with regard to the cases in which plaintiffs were deprived of costs, or merely took those cases out of its operation. It was decided that the Statute of Gloucester was repealed so far as regarded the cases in which a plaintiff was deprived of his costs absolutely, but that so far as regarded the cases in which a plaintiff was entitled to his costs on obtaining a certificate or order, the County Courts Act, 1850, merely imposed a condition. Therefore upon the repeal of the County Courts Act, 1850, s. 11, the Statute of Gloucester did not revive as to the cases in which a plaintiff was deprived of his costs absolutely, but in the other class of cases the condition imposed was taken away by the repeal of the later enactment, and the provisions of the Statute of Gloucester came again into operation (*p*).

Repeal by
a change
of penalty.

The difference between repeal and modification may also be illustrated by the treatment of statutes by which penalties are inflicted. Where the punishment prescribed in an earlier Act is substantially altered by a succeeding Act, the earlier statute is repealed; but if the second Act merely adds a cumulative penalty, the first Act remains in full vigour. Thus the Black Act (9 Geo. I. c. 22) declared that any person killing or destroying any red or fallow deer should be guilty of felony, and suffer death without benefit of clergy. It was held that this Act was repealed by the 16

(*p*) *Mount v. Taylor*, L. R. 3 C. P. 645; *Levi v. Sanderson*, L. R. 4 Q. B. 330; *Mirfin v. Attwood*, L. R. 4 Q. B. 333; see also *Butcher v. Henderson*, L. R. 3 Q. B. 335.

Geo. III. c. 30, which imposed a penalty of £20 on any one killing or destroying red or fallow deer (*q*). Again the 5 Geo. I. c. 27, which punished any person convicted of enticing artificers into foreign service by a fine of £100 and three months' imprisonment, was repealed by 23 Geo. II. c. 13, which visited the same offence with a fine of £500 and twelve months' imprisonment (*r*). By the 19 Geo. II. c. 22, a penalty of not more than £5 and not less than 50s., to be enforced by distress, was imposed on any person throwing ballast into a navigable river. The 54 Geo. III. c. 159, after reciting in a preamble that it was expedient to extend the 19 Geo. II. c. 22, proceeded to visit the same offence with a penalty of £100, to be enforced by imprisonment, but subject to a right of appeal. It was held that, in spite of the recital in the preamble, the earlier Act was repealed by the later (*s*). Following this precedent, the Court held, in a later case, that an alteration in the description of an offence was analogous to an alteration of the punishment. By the 35 & 36 Vict. c. 78, a penalty was imposed on any person who exposed wild birds for sale between certain dates, unless he could prove that such birds were received from some one residing out of the United Kingdom. The 39 & 40 Vict. c. 29 recited that the protection given by the earlier Act was insufficient, and imposed a penalty on persons having in their possession between certain other dates wild fowl recently killed, wounded

(*q*) *R. v. Davis*, 1 Leach, C. C. 271.

(*r*) *R. v. Cator*, 4 Burr. 2026.

(*s*) *Mitchell v. Brown*, 1 E. & E. 267.

or taken, without in any way referring to the receipt of such birds from any one out of the United Kingdom. It was decided that the second Act virtually repealed the first, and that proof of the receipt of birds from abroad afforded no answer to proceedings under the second Act (*t*).

The Courts in Ireland and the United States have also regarded a change of penalty as effecting the repeal of an earlier statute. Thus the 7 & 8 Geo. IV. c. 52, required that any building used for keeping malt should be entered at an Excise Office under a penalty of £100, together with the forfeiture of all malt found in any such building. It was held that this provision was repealed by 4 & 5 Will. IV. c. 51, which substituted a penalty of £200, but did not authorise the forfeiture of the malt (*u*). An Act which provided that no unlicensed person should sell wine or spirits in a less quantity than twenty-eight gallons, on pain of forfeiting twenty dollars, was held to be repealed by another Act substituting fifteen gallons as the minimum quantity, and making the penalty not more than twenty and not less than ten dollars (*x*).

Not by
cumulative
penalties.

Where, however, the penalty inflicted by a later Act is not intended to be substituted for that which an earlier Act has imposed, the earlier Act is not repealed by the later. "It is a general rule," says Lord Mansfield, C.J., "that subsequent statutes which add accumulative penalties do not repeal

(*t*) *Whithead v. Smithers*, L. R. 2 C. P. D. 553.

(*u*) *Att.-Gen. v. Dunn*, 1 Ir. L. R. Ex. 357.

(*x*) *Commonwealth v. Kimball*, 21 Pickering, 373.

former statutes" (*y*). In the case from which this passage is taken, it was decided that the 28 Edw. I. c. 20, which prohibited the making of silver plate under the standard alloy upon pain of imprisonment, was not repealed by later statutes inflicting penalties of double the value of the plate, or of its forfeiture, or of a specified sum of money. So it was decided that the 20 Geo. II. c. 19, s. 4, empowering justices to imprison an apprentice for ill behaviour in his service, was not repealed by 6 Geo. III. c. 25, which empowered them to compel him to serve out his apprenticeship or make satisfaction, on pain of committal (*z*). Again, it was provided by the 3rd section of 17 Geo. II. c. 3, that if any churchwarden or overseer refused to give copies of any poor rate to any inhabitant he should be liable to pay £20, recoverable by action. It was held that this was not repealed by 6 & 7 Will. IV. c. 96, s. 5, which enacted that, if any person having the custody of the poor rate refused to allow any ratepayer to take copies of the poor rate, he should be liable to pay £5, recoverable summarily (*a*). So, too, it was decided that 23 Eliz. c. 1, imposing a penalty of £20 per month upon every person not going to church, did not repeal the earlier Act of the same reign, which gave a forfeiture of twelve pence for every Sunday and holiday on which any one absented himself (*b*). "A subsequent statute," it is said, "that gives a greater punishment does

(*y*) *R. v. Jackson*, 1 Cowp. 297.

(*z*) *Gray v. Cookson*, 16 East, 13.

(*a*) *Tennant v. Cranston*, 8 Q. B. 707.

(*b*) *Foster's Case*, 11 Rep. 63 b.

not take away the power given by a precedent statute" (c).

The language in an American case with regard to revenue laws may well have a more extended application, and may refer equally to all statutes which impose new or additional penalties. "In the interpretation of all laws for the collection of revenue, whose provisions are often very complicated and numerous to guard against frauds by importers, it would be a strong ground to assert that the main provisions of any such laws, sedulously introduced to meet the case of a palpable fraud, should be deemed repealed merely because, in subsequent laws, other powers and authorities are given to the Custom House officers, and other modes of proceeding are allowed to be had by them before the goods have passed from their custody, in order to ascertain whether there has been any fraud attempted upon the Government. The more natural, if not the necessary, inference in all such cases is, that the Legislature intend the new laws to be auxiliary to and in aid of the purposes of the old law, even when some of the cases provided for may equally be within the reach of each" (d).

Repeal not usually effected by affirmative words.

Another question which arises on the subject of repeal by implication is, whether or no such a repeal can be effected by affirmative words. The general rule, as stated by Lord Coke, is, "a later statute in the affirmative shall not take away a former Act, and *eo potius*, if the former be particular and

(c) *R. v. Pugh*, 6 Mod. 141.

(d) *Wood v. U. S.*, 16 Peters, at p. 363.

the latter be general" (e). It is also thus stated by Lord Hardwicke: "The rule touching the repeal of laws is *leges posteriores priores contrarias abrogant*, but subsequent Acts in the affirmative, giving new penalties and instituting new methods of proceeding, do not repeal former *penalties and methods of proceeding* ordained by preceding Acts of Parliament without negative words" (f). It was therefore held, in that case, that the 7 & 8 Will. III. c. 35, which inflicted a fine upon all persons married without banns or licence, did not repeal the Act of Uniformity (1 Eliz. c. 2), rendering persons so married punishable by the censures of the Church. So, too, an Act directing that two overseers of the poor should be appointed did not repeal the 43 Eliz. c. 2, which allowed a greater number (g). Nor does the 99th section of 1 & 2 Vict. c. 106, providing that, where a benefice is under sequestration, the bishop may appoint a curate, and assign him a stipend to be paid by the sequestrator of the benefice out of the profits thereof, repeal the 10th section of 28 Hen. VIII. c. 11, which enacts that if the fruits of the vacation of spiritual promotions be not sufficient to pay the curate's stipend, it shall be borne and paid by the next incumbent (h). The seventh section of 3 & 4 Will. IV. c. 98, enacted that no bill of exchange not having more than three months to run should

(e) *Gregory's Case*, 6 Rep. 19 b.

(f) *Middleton v. Crofts*, 2 Atkyns, at p. 675. In the report the words which are italicised in the text are, obviously by a slip, printed "methods and penalties of proceeding."

(g) *R. v. Pinney*, 2 B. & C. 322.

(h) *Dukins v. Seaman*, 9 M. & W. 777.

be void by reason of any statute or law for the prevention of usury. The first section of 2 & 3 Vict. c. 37, contained identical words with regard to bills of exchange not having more than twelve months to run. It was held that the second of these Acts did not repeal the first, for, though the language used in both Acts was negative, the Acts *inter se* were affirmative (*i*). A somewhat analogous decision was pronounced as to the effect of the doctrine of apparent possession which was established by the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36), upon the order and disposition clause of the Bankruptcy Act, 1849 (12 & 13 Vict. c. 106, s. 125). By the Bills of Sale Act, instruments of a certain class, which were not registered in accordance with the provisions of the Act, were rendered invalid as against assignees in bankruptcy, if the goods comprised in such instrument were in the apparent possession of the maker. But even if such instruments were registered, it was held that the goods would pass to the assignees under the order and disposition clause of the Bankruptcy Act, as it was not the object of the Bills of Sale Act to narrow the doctrine of reputed ownership, or to take any cases out of the operation of the law which already existed for the protection of creditors (*k*).

Unless
those
words
introduce
a new law.

The rule as to affirmative words which has been quoted is subject to one exception. Where an affirmative statute introduces a new law or gives a

(*i*) *Ex parte Warrington*, 3 De G., M. & G. 159, 171, following *Cluck v. Sainsbury*, 11 C. B. 711, and *Nixon v. Phillips*, 7 Ex. 188.

(*k*) *Stansfeld v. Cubitt*, 2 De G. & Jones, 222; *Badger v. Shaw*, 2 E. & E. 472.

new right, and it appears to be the intention of the Legislature that the new law alone shall be followed, or that a right which previously existed should be merged in the one newly created, the later statute will act as a repeal of the earlier, "as implying a negative" (l). Thus the 1 Will. & Mary, c. 21, which provided that the *custos rotulorum* should appoint a clerk of the peace to act "for so long a time only as he shall well demean himself in his said office," was a repeal *pro tanto* of 37 Hen. VIII. c. 1, giving the appointment of the clerk of the peace to the *custos rotulorum*, but limiting the tenure of the office of clerk of the peace to the time that the person making the appointment should continue *custos rotulorum* (m). For the same reason it is said by Lord Coke, that the Act 33 Hen. VIII. c. 23, enacting that persons examined before the King's Council might be tried for treason in any county where the King should please, would have been repealed by 1 & 2 Phil. & Mary, c. 10, which provided that all trials for treason should be had according to the course of the Common Law and not otherwise, even if the later Act had not contained the negative words "and not otherwise" (n). Section 57 of 4 & 5 Will. IV. c. 76, enacted that every man who should marry a woman having legitimate or illegitimate children should be liable to maintain such children, and should be chargeable with all relief granted to

(l) *Harcourt v. Fox*, 1 Shower, at p. 520, *per* Eyres, J.; *O'Flaherty v. M'Dowell*, 6 H. L. C. at p. 157, *per* Lord Cranworth, L.C.

(m) *Harcourt v. Fox*, 1 Shower, 506.

(n) *Foster's Case*, 11 Rep. at p. 63 a.

them. It was held that these words, though affirmative, operated, in the cases to which the Act referred, as a repeal of so much of 18 Eliz. c. 3, s. 2, and 49 Geo. III. c. 68, as rendered the putative father of a bastard child liable for its maintenance (*o*). Section 6 of 8 & 9 Will. III. c. 30, provided that appeals against orders of removal should be determined at the Quarter Sessions of the Peace for the county, division, or riding containing the parish from which the removal was ordered, and not elsewhere. 5 & 6 Will. IV. c. 76, s. 105, gave jurisdiction in boroughs to the recorder over all matters cognisable by any Court of Quarter Sessions of the Peace for counties. It was at first suggested that this section gave a recorder concurrent jurisdiction (*p*), but in a subsequent case the Court held that the affirmative words of the later section repealed the earlier provision, and that a recorder had exclusive jurisdiction over appeals against orders of removal from any parish within his borough (*q*).

Special
Acts not
repealed
by general.

One important rule which governs repeals by implication has yet to be considered. This is that special Acts are not repealed by general Acts, "unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two Acts standing together" (*r*). It was said by Sir Orlando Bridgman that "the law will not allow the exposi-

(*o*) *Lang v. Spicer*, 1 M. & W. 129.

(*p*) *R. v. St. Edmund's, Salisbury*, 2 Q. B. 72.

(*q*) *R. v. Suffolk Justices*, 2 Q. B. 85.

(*r*) *Thorpe v. Adams*, L. R. 6 C. P. at p. 135, *per* Bovill, C.J.

tion to revoke or alter by construction of general words any particular statute where the words may have their proper operation without it" (s). In our own day it has been laid down by Wood, V.-C., that "in passing a special Act the Legislature had their attention directed to the special case which the Act was meant to meet, and considered and provided for all the circumstances of that special case; and having so done they are not to be considered by a general enactment passed subsequently, and making no mention of any such intention, to have intended to derogate from that which by their own special Act they had thus carefully supervised and regulated" (t). Elsewhere the same judge uses the following words: "Wherever the Legislature has, by such an Act, vested powers of a special character in a corporate body or any body of commissioners for the express purpose of carrying out a particular object which the Legislature has in view, no subsequent statute in merely general terms, giving powers which by their generality apply to the special powers conferred by the former Act, will override the special powers thereby delegated to the particular body of commissioners or corporation. . . . The Legislature in passing a special Act has entirely in its consideration some special power which is to be delegated to the body applying for the Act on public grounds. . . . When a general Act is subsequently passed, it seems to be a necessary inference that the Legislature does not intend thereby to regulate all

(s) *Lyn v. Wyn*, Bridg. C. P. at p. 127.

(t) *Fitzgerald v. Champneys*, 2 J. & H. at pp. 54, 55

cases not specially brought before it; but looking to the general advantage of the community without reference to particular cases, it gives large and general powers which in their generality might, but for this very wholesome rule of interpreting statutes, override the powers which upon consideration of the particular case the Legislature had before conferred by the special Act for the benefit of the public" (*u*).

This rule followed in early times.

The principles thus stated have been adopted in some of the earliest cases as well as in those more recently decided. Thus it was held that a statute passed in the 14th year of Edward the Third, and requiring all merchants who shipped goods to be exported over seas to import two marks of bullion for every sack of wool exported, was not repealed by other Acts providing that merchants should not be charged except for the ancient custom (*x*). So, too, it is said in an early Report, as illustrating the maxim *generalia specialibus non derogant*, "an Act of Parliament ordains that A. B., who is tenant in tail, shall only make leases for life; the statute of 32 Hen. VIII., which enables tenant in tail to make leases for three lives, does not repeal the said Act for the reason aforesaid" (*y*). Again, it is laid

(*u*) *London and Blackwall Rail. Co. v. Limehouse Board of Works*, 3 K. & J. at pp. 127, 128.

(*x*) *Brooke's Abridgment*, tit. Parliament, 52; *Jenkins's Centuries*, 3rd cent. case 41, p. 120, cited by Turner, L.J., in *Trustees of Birkenhead Docks v. Laird*, 18 Jur. at p. 884; 23 L. J. Ch. at p. 459. The passage which contains this reference is omitted in the report of the same case in 4 De G. M. & G. 742, and it is said by Wood, V.-C., in *Fitzgerald v. Champneys*, 2 J. & H. at p. 53, that the omission is intentional.

(*y*) *Jenkins's 3rd Century*, case 41, cited by Wood, V.-C., in *Fitzgerald v. Champneys*, 2 J. & H. at p. 54.

down by Lord Coke that the 5 Eliz. c. 4, enacting that none should use a trade without being an apprentice, did not repeal the Act of the 4 & 5 Phil. & Mary, which provided that no weaver should use his trade without being an apprentice (z). Very similar to this was the decision that the 33 Geo. III. c. 5, rendering members of friendly societies irremovable until they were actually chargeable, was not repealed by the 35 Geo. III. c. 101, which made all persons irremovable until they were actually chargeable (a).

The Joint Stock Companies Winding-up Act, 1844 (7 & 8 Vict. c. 111, s. 10), provided that proof under a fiat against a company should not prejudice the right of a creditor to proceed against the shareholders. The Bankruptcy Act, 1849 (12 & 13 Vict. c. 106, s. 182), re-enacted without any change of language the 59th section of 6 Geo. IV. c. 16, by which proof under a fiat was deemed an election not to proceed by action. It was held that by inserting in the Act of 1849 a section which simply re-enacted an earlier statute, the Legislature did not intend to repeal the express provisions of an intermediate Act (b). So, too, it was provided by the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104, s. 388), that no owner of a ship should be answerable for damage caused by the fault of a pilot whose employment was compulsory. The Thames Conservancy Act, 1857, s. 96, rendered the owner of every vessel navigating

(z) *Gregory's Case*, 6 Rep. 19 b.

(a) *R. v. Idle, Inhabitants*, 2 B. & Ald. 149.

(b) *Morisse v. Royal British Bank*, 1 C. B. N. S. 67.

the Thames answerable for all damage done by such vessel, or any person employed in it, to the property of the conservators. It was held that the express provision as to compulsory pilotage was not repealed by these general words (*c*).

Cases
where
special
privileges
are given.

The rule now under consideration applies most forcibly to cases in which a right, privilege, or exemption is conferred on some person or persons, class or body, by a special Act, and might be taken away by the general words of a subsequent Act, if they were construed literally.

Thus the 7 Geo. III. c. 37, which provided for the completion of a bridge across the Thames, enacted that the ground and soil of the river inclosed and embanked for the purpose of making the bridge should vest in certain persons free from all taxes. It was held that this exemption was not destroyed by the Act which imposed the land tax in general terms upon all property (*d*), nor by an Act imposing rates for lighting and paving (*e*). On the same ground it was decided that the 6 & 7 Vict. c. 36, s. 1, which exempted from rates the land and houses belonging to societies instituted for the purposes of science, literature, or the fine arts exclusively, was not repealed by an Act empowering the council of the borough of Liverpool to make rates on every person occupying any house or land, unless such house or land was used for religious or educational purposes (*f*). It is

(*c*) *Conservators of the Thames v. Hall*, L. R. 3 C. P. 415.

(*d*) *Williams v. Pritchard*, 4 T. R. 2.

(*e*) *Eddington v. Borman*, 4 T. R. 4.

(*f*) *Liverpool Library v. Mayor of Liverpool*, 5 H. & N. 526.

difficult to reconcile with these cases an Irish decision to the effect that some local Acts for the county of the city of Cork, which exempted certain premises from grand jury assessments, were repealed by a public Act providing in general terms for the levy of grand jury assessments (*g*).

An Act for regulating Police Courts in the Metropolis (2 & 3 Vict. c. 71, s. 47) contained an express provision that all penalties made recoverable summarily, and recovered before any metropolitan police magistrate, should be adjudged to be paid to the receiver of metropolitan police, unless they were payable to an informer or a party aggrieved. The 17 & 18 Vict. c. 38, passed for the suppression of gaming-houses, imposed certain penalties, and enacted that half of each penalty should be paid to the informer and half should go to the overseer of the parish. It was held that the general words of this Act did not repeal the special provision in the earlier Act, and that an exception must be implied in the later Act whenever the penalties imposed by it were recovered before a metropolitan police magistrate. In that case the half which was not payable to the informer must go to the receiver of metropolitan police, although if the penalty was recovered in any other place than the metropolis, or before two justices in the metropolis, that half would be paid to the overseer of the parish (*h*).

A railway company was authorised by its special Act to build a station on a certain piece of land.

(*g*) *Jones v. Hayes*, 1 Ir. L. R. Q. B. 341.

(*h*) *Wray v. Ellis*, 1 E. & E. 276.

The Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), which was passed subsequently, forbade the erection of any building beyond the regular street line without the consent of the Metropolitan Board of Works. It was held that the company might build a station on the piece of land mentioned in the special Act although it would be beyond the regular line of the street (*k*). So, too, it was held that a local Act passed for the purpose of regulating the ecclesiastical arrangements of the parish of St. Pancras was not repealed by the Church Building Acts, and therefore an order made under one of those Acts assigning a district chapelry to a chapel in the parish was *ultra vires* (*l*). Again, by a private Act passed in the reign of Queen Anne for the improvement of the deanery of Lichfield, it was enacted that the rectory of Tatenhill should be annexed to the deanery for ever. Section 50 of 3 & 4 Vict. c. 113, provided that "all the estate and interest which the holder of any deanery . . . and his successors have and would have in any . . . endowments whatsoever annexed or belonging to . . . such deanery . . . shall accrue to and be vested absolutely in the ecclesiastical commissioners for England." It was held that these general words did not repeal the particular provision of the Act of Anne (*m*).

A private Act of Parliament provided that Serjeant's Inn should pay the parish of St. Dunstan

(*k*) *London and Blackwall Rail. Co. v. Limehouse District Board of Works*, 3 K. & J. 123.

(*l*) *Fitzgerald v. Champneys*, 2 J. & H. 31.

(*m*) *R. v. Champneys*, L. R. 6 C. P. 384.

£80 a year in full for all poor rates due or claimed from time to time. By the 7th section of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), it was enacted that owners should not in future be rated instead of occupiers. The Court decided that these general words left the rating of Serjeant's Inn unaffected (*n*). "If a bill had been brought into Parliament to repeal the local Act," said Willes, J., (*o*) "it never would have been allowed to pass into a law without notice to the parties whose interests were to be affected by it, . . . whereas a general provision is discussed with reference to general policy, and without any reference to private rights, with which there is no intention on the part of the Legislature to interfere."

A private Act of the 2 & 3 Phil. & Mary limited lands to Edward Neville and others in tail male with limitations over and an ultimate limitation to the Crown. By the same Act it was provided that "no feoffment, discontinuance, fine or recovery . . . or any other act or acts . . . made, done or suffered" by Edward Neville or the other persons named or their heirs, "should bind or conclude, or put from entry . . . any of the heirs in tail." It was held by Channell and Cleasby, BB., Bramwell, B. dissenting, that this Act was not repealed by the Statute of Limitations, 3 & 4 Will. IV. c. 27, and that the heir in tail male of Edward Neville could recover the lands from a person who had a possessory title of more than twenty years (*p*).

(*n*) *Thorpe v. Adams*, L. R. 6 C. P. 125.

(*o*) At p. 138.

(*p*) *Earl of Abergavenny v. Brace*, L. R. 7 Ex. 145.

Special
Acts not
repealed
by subse-
quent
special
Acts.

It has been decided in some cases that a special Act is not to be considered as repealed by a subsequent special Act without express words or necessary implication. Thus an Act of Parliament authorised the lord of a manor to supply a town with water at his own cost, and for that purpose to break up the pavement in any of the streets. This Act was held not to be repealed by the Portsea Paving Act, 1792, which vested the soil of the streets in trustees, and empowered them to take proceedings against persons breaking up the streets (*q*). The Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), enacted that the supply of water should be constantly laid on at such a pressure as would make it reach the top story of the highest houses within the limits of the special Act, unless the special Act provided that the supply need not be laid on under such pressure. A local Act passed in 1855 provided that the water supplied to Wolverhampton need not be constantly laid on under pressure. In 1856, the company formed under the local Act was amalgamated with another company by an Act which incorporated the Waterworks Clauses Act, 1847. It was held that this incorporation did not have the effect of repealing the provision of the Act of 1855, or of imposing on the company the obligation of laying on water under constant pressure (*r*).

Where
special
Acts may

Not many cases are to be found in which the provisions of general Acts have been considered so

(*q*) *Goldson v. Buck*, 15 East, 372.

(*r*) *Purnell v. Wolverhampton New Waterworks Co.*, 10 C. B. N. S 576.

necessarily inconsistent with those of previous special Acts as to effect a repeal by implication. Where, however, a local Act provided that prisoners from the borough of Colchester should be maintained in the county gaol of Essex upon certain terms, and it was afterwards enacted, by 5 & 6 Vict. c. 98, that in every borough, having a separate Court of Quarter Sessions, and sending its prisoners to the county prison, the council should pay to the county certain expenses of repairs and improvements to the county prison, it was held that the special Act was repealed. It was manifestly the intention of the Legislature to provide one uniform system for all gaols, and to put an end to all special usages prevailing in particular gaols and boroughs (*s*). So it was provided by section 6 of the 21 Jac. I. c. 16, that a plaintiff who recovered less than forty shillings damages in an action for slander should recover no more costs than damages. Order 55, appended to the Judicature Act, 1875, laid down the rule that where an action was tried before a jury the costs should follow the event unless the judge at the trial or the Court should otherwise order. The Common Pleas Division decided that this order repealed the Statute of James (*t*). The Court of Appeal took a different view, holding that Order 55 contained a general provision which left the special provision in the earlier Act unaffected (*u*). But the House of Lords reversed the judgment of the Court of

be re-
pealed by
general
Acts.

(*s*) *Bramston v. Mayor of Colchester*, 6 E. & B. 246.

(*t*) *Parsons v. Tinsling*, L. R. 2 C. P. D. 119.

(*u*) *Garnet v. Bradley*, L. R. 2 Ex. D. 349.

Appeal, and declared that Order 55, which gave the Court a discretionary power to award or refuse costs, was necessarily inconsistent with an Act laying down a hard-and-fast rule that in certain cases a successful party should have no more costs than damages (*x*).

General
Act may
be re-
pealed *pro*
tanto by a
special
Act.

A general Act may to a certain extent be repealed by a special Act, according to the principle stated by Lord Westbury (*y*), and cited with approval by the Court of Common Pleas (*z*):—"If the particular Act gives in itself a complete rule on the subject, the expression of that rule amounts to an exception of the subject matter of the rule out of the general Act." Thus section 5 of 5 & 6 Vict. c. 97, enacted that actions for anything done in pursuance of local or personal Acts, should be brought within two years. A local Act, 8 & 9 Vict. c. 21, giving power to the justices of Lancashire to make certain rates, incorporated the provisions of the County Rates Act, 55 Geo. III. c. 51, by which a limitation of three months was imposed. It was held that the incorporation of these provisions in the local Act was *pro tanto* a repeal of the general Act, and that an action for anything done in pursuance of 8 & 9 Vict. c. 21, must be brought within three months (*a*). So, too, a local turnpike Act, imposing specific tolls on carriages in proportion to the breadth of their wheels, was held to be

(*x*) *Garnet v. Bradley*, L. R. 3 App. Cas. 944.

(*y*) *Ex parte St. Sepulchre, Re Westminster Bridge Act*, 4 De G. J. & S. at p. 242; 33 L. J. Ch. at p. 376.

(*z*) *L. C. & D. Rail. Co. v. Wandsworth Board of Works*, L. R. 8 C. P. at p. 189.

(*a*) *Boden v. Smith*, 18 L. J. C. P. 121.

a repeal *pro tanto* of the General Turnpike Act, 13 Geo. III. c. 84, s. 23, which rendered all carriages with wheels less than six inches in breadth liable to half as much again as the tolls payable under any Acts of Parliament (b). Again, the General Turnpike Act, 3 Geo. IV. c. 126, enacted by its fourth section that all its provisions should extend to all future turnpike Acts, except as to things expressly referred to and varied by such Acts. Section 32 of the same Act provided that all implements of husbandry, in which by a later Act threshing-machines were included, were to be free from toll. A local Act of later date defined the word cart as including threshing-machines, and imposed a toll on every horse drawing a cart. It was held that under this local Act threshing-machines were liable to toll, inasmuch as the provisions of the general Act were expressly referred to and varied (c). "I think it is clear," said Willes, J. (d), "that not only express words but any repugnancy would be sufficient to repeal the former Act."

Having now considered what are the circumstances under which the repeal of a statute will be implied, we may add that the mere fact of an Act of Parliament not having been put in force for a considerable length of time is not sufficient to effect its repeal. A statute cannot be repealed by non-user where the words are plain (e), but if an

How a
repeal
cannot be
effected.

(b) *Ridge v. Garlick*, 8 Taunt. 424.

(c) *Ablert v. Pritchard*, L. R. 1 C. P. 210.

(d) *At p.* 214.

(e) *White v. Boot*, 2 T. R. 274.

Act has lain idle for a great many years, and the question arises whether or no it has been repealed by implication, a long series of practice without any exception will go far to remove doubts or to explain any ambiguity (*f*). Nor is the repeal of an Act of Parliament effected by mere words of reference in the schedule to a later Act (*g*); nor by a recital of an intention to repeal without any repealing clause or inconsistent provisions (*h*); nor by affirmative words continuing until a certain time an Act which was itself perpetual (*i*).

How a repeal may be prevented.

The repeal of a statute may be prevented by such an incorporation of its provisions in some other statute, or by such a reference to or repetition of its provisions, as amounts to a re-enactment.

The 13 Geo. III. c. 78, empowered the Court which tried an indictment for the non-repair of a highway to award costs if the defence to such an indictment was frivolous. Another section of the same Act enabled a single justice acting on his own view to present a highway at Quarter Sessions for non-repair. By the 43 Geo. III. c. 59, all the provisions of that Act were extended to county bridges as fully as if the same were repeated and re-enacted. The 13 Geo. III. c. 78, was repealed by 5 & 6 Will. IV. c. 50. After such repeal it was held that upon the trial of an indictment for the non-repair of a county bridge, the Court could

(*f*) *Leigh v. Kent*, 3 T. R. 362; *The India*, Br. & Lush. 221; 33 L. J. Adm. 193.

(*g*) *Allen v. Flicker*, 10 A. & E. 640.

(*h*) *Mahony v. Wright*, 10 Ir. C. L. R. Q. B. at p. 426, *per* Lefroy, C.J.

(*i*) *Prices of Wine*, Hob. 215.

award costs if the defence was frivolous (*k*), and that a single justice might present a county bridge at Quarter Sessions for non-repair (*l*). So, too, the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27, s. 8), enacted that the provisions of 9 Geo. IV. c. 61, as to appeals to Quarter Sessions, should have effect with respect to the grant of certificates under that Act. The provisions of 9 Geo. IV. c. 61, as to appeal, were repealed by the Licensing Act, 1872 (35 & 36 Vict. c. 94). It was held, however, that they were kept alive by incorporation so far as regarded the grant of certificates under the Wine and Beerhouse Act, 1869 (*m*).

Sometimes the repeal of an Act of Parliament is delayed for a time by a saving clause in the repealing Act, which excepts from repeal pending proceedings, or anything duly done, or any right, liability, or penalty already incurred under the former statute. Thus, the 251st section of the Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), which created certain offences on the part of bankrupts, was repealed by the Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), except as to pending proceedings or any penalty incurred. It was held that, where a person had committed an offence against the earlier section, and a warrant for his apprehension upon that charge had been issued before the section was repealed, a proceeding was pending and a penalty had already been incurred (*n*). So the Public Health Act, 1875 (38

Repeal
delayed by
saving
clause.

(*k*) *R. v. Merionethshire, Inhabitants*, 6 Q. B. 343.

(*l*) *R. v. Brecon, Inhabitants*, 15 Q. B. 813.

(*m*) *R. v. Smith*, L. R. 8 Q. B. 146.

(*n*) *R. v. Smith*, L. & C. 131.

& 39 Vict. c. 55), repealed some former statutes, with a saving as to "anything duly done" and "any right or liability incurred" under those statutes. It was held that a rate made under the powers of those Acts, but not complete until the day of their repeal, was kept alive by the first saving (*o*), and that the liability to obey an order made under the powers of those Acts before their repeal was kept alive by the second (*p*).

Effect of
repeal on
statutes
them-
selves.

The only question which remains to be discussed is the effect of the repeal of a statute. So far as statutes themselves are concerned, the effect of a repeal upon them has been thus stated by Lord Tenterden, C.J.: "It has been long established that, when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed" (*q*). In that case (*r*) a trader had committed an act of bankruptcy prior to the passing of 6 Geo. IV. c. 16, which repealed all the former Acts on the subject. It was held that the statute in question must be considered as if it were the first that had ever been passed with reference to bankruptcy, and therefore a commission could not be supported where an act of bankruptcy occurred before the passing of the statute. The same principle has been followed in other cases. The first section of the 17 & 18 Vict. c. 25, provided that all actions against any industrial or provident society should be brought against

(*o*) *R. v. West Riding, Justices*, L. R. 1 Q. B. D. 220.

(*p*) *Barnes v. Eddleston*, L. R. 1 Ex. D. 102.

(*q*) *Surtees v. Ellison*, 9 B. & C. at p. 752.

(*r*) 9 B. & C. 750.

the registered officer or trustees of the society. This Act was repealed by 25 & 26 Vict. c. 87, which provided that pending actions should be continued against the society itself. It was held that where no action was pending at the time when the repealing Act was passed, but a contract had been already made, the individual members of the society were liable upon it (*s*). So where a company existed which was illegal by virtue of 19 & 20 Vict. c. 47, s. 4, and that Act was repealed by 20 & 21 Vict. c. 14, s. 3, it was held that debts, contracted by the company between the time of the passing of those two Acts, might be recovered after the passing of the second Act. The first Act, it was said, must be considered, except as to transactions past and closed, as if it had never existed, but whilst the debts remained unpaid the transactions in question were not past and closed (*t*).

The rule that a repealed statute is to be considered as if it had never existed does not prevent the Court from looking at a repealed Act *in pari materia* on a question of construction (*u*), or at a repealed clause for the purpose of ascertaining the subject matter to which it referred. Nor does it extend so far as to cause the construction of one clause in an Act of Parliament to be altered by the repeal of another clause in the same statute. Thus where 52 Geo. III. c. 150, imposed a duty on "artificial mineral waters and all waters impreg-

When repealed Act may be looked at.

(*s*) *Dean v. Mellard*, 15 C. B. N. S. 19.

(*t*) *Grisewood and Smith's Case*, 4 De G. & J. 544, 557.

(*u*) *Ex parte Copeland*, 2 De G. M. & G. 914, citing *R. v. Lordale*,

1 Burr. 447.

nated . . . with carbonic acid gas," and, by a general clause, on "all other . . . waters," it was held by the Court of Appeal, reversing the judgment of the majority of the judges of the Exchequer Division, that a water taxable under the first head did not, on the repeal of that provision, become taxable under the general clause (*x*). "No judge," said Kelly, C.B., the dissentient in the Court below (*y*), "ever laid down as law that, where a particular clause in an Act of Parliament is repealed, the whole Act must be read as if that clause had never been enacted. All that can be said is that the clause is to be taken as if it never had been enacted."

One part of an Act may in some cases be affected by the repeal of another. Thus, if a substantive enactment in a statute is expressly repealed, that which comes by way of proviso upon it is repealed by implication (*z*).

Effect of
repeal on
powers
given by
statutes.

In addition to its direct effect upon statutes themselves, a repeal has also a material influence upon the rights, powers, or exemptions conferred by statutes, or upon the punishments they may inflict. Where an act may be done upon the fulfilment of certain conditions contained in a statute, and the statute which prescribes those conditions is repealed, the act itself is no longer authorised. Thus a tenant-in-tail had power given him under an estate Act to alien the entailed estate on condition of his making the declaration, and taking

(*x*) *Att.-Gen. v. Lamplough*, L. R. 3 Ex. D. 214.

(*y*) *At p. 223.*

(*z*) *Horsnail v. Bruce*, L. R. 8 C. P. at p. 385, *per* Bovill, C.J.

the oaths, required by certain statutes. Afterwards the statutes requiring the declaration and oaths were repealed, and it was held that, by reason of this repeal, the power to alien could no longer be exercised (*a*).

An existing exemption may be taken away by the repeal of a statute, or of a part of a statute. An Act imposed a duty upon deposits of money with any company engaged in the business of banking, but contained a proviso that the Act should not extend to savings banks of a certain class. Upon the repeal of this proviso, it was held that savings banks of that class became liable to the duty (*b*).

Another effect of repeal is that if an Act is repealed before the powers which it gives have been fully exercised, although all conditions requisite for their exercise may be fulfilled, yet, in the absence of a saving clause, nothing further can be done under its authority. Thus the 13 Geo. III. c. 78 gave a defendant in an action for anything done in pursuance of that Act treble costs upon a nonsuit. After the trial of an action, but before judgment was signed, that Act was repealed by the Highway Act, 5 & 6 Will. IV. c. 50. It was held that the right to treble costs was taken away by such repeal (*c*). A local Act which imposed a liability to repair highways upon certain townships, and gave a form of indictment against them for non-repair, was repealed after an indictment had been preferred, but before its trial. Judgment was

(a) *Earl of Shrewsbury v. Scott*, 6 C. B. N. S. 1, 221.

(b) *Bank for Savings v. The Collector*, 3 Wallace, 495.

(c) *Charrington v. Meatheringham*, 2 M. & W. 228.

arrested (*d*). By the 24th section of 13 Geo. III. c. 78, justices of the peace were empowered to make presentments of highways out of repair, and such presentments were rendered equivalent to the finding of a grand jury. This Act was repealed by 5 & 6 Will. IV. c. 50, between the date of the presentment of a highway and the trial of an indictment founded upon that presentment, and the judgment was arrested (*e*). So, too, prisoners were tried in September, 1820, for a theft committed on the 11th of July of the same year. On the 25th of July, 1820, the royal assent was given to the 1 Geo. IV. c. 117, repealing the Act 10 & 11 Will. III. c. 23, which deprived persons committing such an offence of the benefit of clergy. It was held that the prisoners could not be sentenced under either statute (*f*).

One or two other cases have given rise to a conflict of opinion. The second section of 43 Eliz. c. 6 gave a judge power to deprive a plaintiff of costs by a certificate. Where a judge refused to certify until after the decision of a point reserved at the trial, and the Act was repealed before that point was decided, it was held that after its repeal the judge had no power to grant a certificate (*g*). In a subsequent case, indeed, it was held that where a verdict was found before a repealing Act came into operation, and afterwards an application was made to a judge for an order giving the plaintiff his costs, the right to such an order had already

(*d*) *R. v. Denton*, 18 Q. B. 761.

(*e*) *R. v. Mawgan, Inhabitants*, 8 A. & E. 496.

(*f*) *R. v. M'Kenzie*, Russ. & Ry. 429.

(*g*) *Morgan v. Thorne*, 7 M. & W. 400.

vested, and could not be affected by the repealing statute (*h*). A similar decision was pronounced by a majority of four out of seven judges in the Supreme Court of the United States. An Act of the State of California gave a pilot a right to half pilotage fees if he spoke a vessel, and his services were declined. A pilot had brought an action for these fees, and obtained judgment; but while an appeal to the Supreme Court was pending, the Californian Act was repealed. It was held, however, that the pilot's right had vested, and could not be affected by any repeal (*i*). Other American cases follow the bulk of English precedents. Thus it has been decided that an action for penalties could not be sustained when the statute inflicting the penalties was repealed before judgment (*k*); nor an action for the recovery of money paid in violation of law, where the statute giving a right to recover money so paid was repealed in the course of the proceedings (*l*). Where a person was convicted of the offence of selling without a licence a less quantity of spirits than twenty-eight gallons, and before judgment an Act was passed altering the penalty, and reducing the minimum quantity of spirits to fifteen gallons, it was held that as the two Acts were inconsistent, and the second operated as a repeal of the first, judgment must be arrested (*m*).

(*h*) *Restall v. L. & S. W. Rail. Co.*, L. R. 3 Ex. 141; which, however, was dissented from by the Court of Queen's Bench in *Butcher v. Henderson*, L. R. 3 Q. B. 385, as inconsistent with *Morgan v. Thorne*.

(*i*) *Steamship Co. v. Joliffe*, 2 Wallace, 450.

(*k*) *Norris v. Crocker*, 13 Howard, 429.

(*l*) *Kimbro v. Colgate*, 5 Blatchf. C. C. R. 229.

(*m*) *Commonwealth v. Kimball*, 21 Pickering, 373.

•

INDEX.

ABSURDITY.

language may be modified to avoid absurdity, 112, 113

ACTION.

remedy by action when taken away, 46, 47
authority of statutes may be enforced by action, 70
 except where right and remedy created by same statute
 72, 76
 and same part of statute, 76, 77
 and are co-extensive, 77, 79
does it lie where statute creating a right gives penalty to
 common informer? 79
does not lie where different mischief suffered from that aimed
 at by the statute, 79
cannot be brought on contract in violation of statutes, 81
 unless penalties are imposed for the protection of the
 revenue only, 83, 85
notice of action to be given to justices and others who are pro-
 tected by statute, 87, 90

AFFIRMATIVE AND NEGATIVE STATUTES.

accuracy of this classification questioned, 225
affirmative Acts do not take away customs, 225
 or alter the Common Law, 225, 226
affirmative words are not imperative, 226
 except in enacting statutes, 228, 229
negative words are, 227
 except in declaratory Acts, 229, 230
affirmative words do not repeal earlier statutes, 326—328
 unless they introduce a new law, 328—330

ALTERATION

- of Common Law not readily presumed, 19—21
- of Statute Law when presumed, 21
 - from change of language, 21
 - from re-enactment of former provisions in different language, 21—23
- of penalty effecting repeal of a statute, 322—324
- of description of offence repealing a statute, 323

ANCIENT AND MODERN STATUTES.

- Statutes divided into ancient and modern, 213, 214
- greater latitude allowed in construing ancient statutes, 214, 215
- words used for examples in ancient statutes, 215—217
- scarcely ever in modern statutes, 217
- extension by equity most common in ancient statutes, 239—242
- rule as to Acts in *pari materia* most appropriate in case of ancient statutes, 261

APPEAL.

- not given without express words, 43

AUTHORITY OF STATUTES.

- highest known to the law, 28
- what can be done by statutes, 28—30
- authority extends over the whole realm, 30
- confined to its own province, 31
- cannot alter the course of nature, 31
- does not extend beyond the limits of this country, 32
- does not extend to foreign things, 33
- does not bind future Parliaments, 34
- does not extend to impossibilities, 35
- limited by the necessity of using express words, 36
 - to bind the Crown, 36, 37
 - in what cases the Crown is not bound unless named, 37—39
 - when the Crown is bound by necessary implication, 39
 - when the Crown is bound though not named, 40—42
- express words needed to take away jurisdiction of Superior Courts, 42
 - to take away writ of *certiorari*, 43
 - to give an appeal, 43
 - to take away right of changing venue, 44
 - to affect public or private rights, 47—49
- when extended by implication, 49—52
- when not so extended, 52—54

AUTHORITY OF STATUTES (*continued*)

- must be strictly followed, 54
 - where new jurisdiction is conferred, 55
 - whether civil or criminal, 56
 - where matters of public interest are concerned, 57—59
 - where statute authorises an interference with private property, 59—61
 - when bye-laws are made in pursuance of statutes, 61
 - when certificates are given in pursuance of statutes, 62—64
- cannot be evaded, 64
- agreements contrary to the policy of statutes are void, 66
- difficult to decide what is an evasion, 66—68
- evasion in popular sense not intended, 68
- responsibility imposed by statutes cannot be shifted, 68, 69.
- how authority may be enforced, 69
 1. Directly, 69
 - by indictment, 69
 - by action, 70
 - not where statute which confers right creates remedy, 72, 73
 - if right and remedy created by same statute, 74—76
 - and same part of statute, 76, 77
 - and are co-extensive, 77—79
 2. Indirectly, 80
 - contracts in violation of statutes void, 80
 - actions cannot be brought on contracts in violation of statutes, 81
 - unless penalties are imposed for the protection of the revenue only, 83—85
 - cases in which contracts themselves are not avoided, 85—87
- protection given by statutes to those who act under their authority, 87
- to what persons it is given, 87, 88
 - justices of the peace, 88, 89
 - constables and other officers, 89, 90
 - persons executing public works, 91
- in cases of omission, 91
 - to what persons protection is not given, 92—94
- there must be honest belief that acts done are authorised, 94—96
- reasonable belief not necessary, 96, 97
- but there must be some grounds for such belief, 97, 98

BANKRUPTCY ACTS

- do not apply to foreigners who have not resided in England,
33
- do not bind the Crown unless it is named, 39
- agreements contrary to the policy of Bankruptcy Acts are
void, 66
- sometimes retrospective, 162
- extended to matters of subsequent creation, 167
- general words in, restrained, 176
- to be construed liberally, 234
- not restrained by recital, 287—289
- restrained by general heading, 295
- order and disposition clause not affected by Bills of Sale Act,
328

BILLS OF SALE ACT

- successfully evaded, in the popular sense of the word, 67, 68
- to be strictly construed, 245, 246
- does not affect order and disposition clause in Bankruptcy
Act, 328

BYE-LAWS.

- authority to make bye-laws must be strictly followed, 61

CASES

- not to be included merely because there is no reason for
excluding them, 103, 104

CASUS OMISSUS

- cannot be supplied by the Courts, 24

CERTIFICATES.

- authority to give certificates must be strictly followed, 62—64

CERTIORARI

- not taken away without express words, 43

CHARGES.

- Acts imposing charges, taxes, duties, or other burdens, to be
construed strictly, 244, 248

CLAUSES.

- general words restrained by subsequent clauses, 174, 175

CLAUSES OR SECTIONS. *See* SECTIONS, INTERPRETATION
CLAUSE, MARGINAL NOTES, GENERAL HEADINGS.

COMMENCEMENT OF OPERATION.

present rule, 154
former rule worked injustice, 154, 155
effect of future day being fixed, 155, 156

COMMISSIONS,

reports of, cannot be looked at in construing statutes, 106

COMMON LAW

improperly contrasted with Statute Law, 1
alteration of, not presumed, 19—21
rights may be taken away by statute without compensation,
29
principles not altered by an extension of statutes by implication, 53, 54
remedies of indictment and action excluded where statute
which confers a right creates also the remedy, 72
statutes to be construed in conformity with Common Law
rather than against it, 107
state of Common Law before making of a statute to be considered, 107
rules in Heydon's case, 108
not altered by affirmative statutes, 225, 226
statutes restrictive of, to be strictly construed, 244

COMPANIES

cannot use their powers for any purpose not sanctioned by the
Legislature, 60, 61
may not apply their funds to any purpose other than that
specified in statute, 81
special Acts giving powers to companies to interfere with
private property to be strictly construed, 59—61, 222, 223
245

COMPANIES ACT

does not apply to foreign companies, 33
does not bind the Crown unless it is named, 39
agreements contrary to the policy of, void, 66

CONFLICTS OF OPINION

as to creation of exclusive jurisdictions, 45—47
as to restraining general words, 178, 179
whether statutes are imperative or directory, 194—196

CONFLICTS OF OPINION (*continued*)

- whether statutes as to costs are to be construed strictly, 231, 232
- whether Statutes of Limitation to be construed strictly, 232
- whether enacting words are restrained by preamble or recital, 286—289

CONSEQUENCES

- not to be considered, 116
- unless language is doubtful, 151—153

CONSIDERATIONS

- of what would have been wise and prudent, not to be regarded, 103

CONSTRUCTION OF STATUTES.

- general rule for the construction of statutes, 99
- intention of the Legislature to be ascertained, 99
- expressions of early writers open to misconception, 100, 101
- object is to ascertain the mind of the Legislature as expressed in words, 102—104
- intention of the Legislature is not to be guessed at, 103
 - or inferred from external evidence, 105
 - such as Parliamentary history of a statute, 105
 - or reports of commissions, 106
 - or plans and sections, 106
 - or debates, amendments, policy of Government, 106, 107
- but previous state of law to be remembered, 107
- construction in conformity with Common Law rather than against it, 107
- rules in Heydon's case, 108
- whole of Act to be considered, 108—111
- what is golden rule for the construction of statutes, 109, 111
 - stated by Parke, B., 111
 - followed by most of the judges, 112—114
 - to what extent it prevails, 114, 115
 - what are its limits, 115, 116
 - does not allow for consideration of consequences, 116
- sentences to be read grammatically, 117
- effect to be given to all the words of the statute, 117, 118
- instances in which words have been inserted, 118—120
- instances of mistakes being corrected, 121
- words to receive their full and proper meaning, 121
 - ordinary grammatical meaning, 122
 - popular meaning, 122—124
 - unless technical meaning has been acquired, 124, 125
 - unless popular meaning at variance with proper meaning, 126, 127

CONSTRUCTION OF STATUTES (*continued*)

- always to receive reasonable meaning, 127—129
 - even though that meaning not strictly accurate, 130
- words not to be read too literally, 131
 - words read in a wider sense than they usually bear, 131—134
 - words read in a narrower sense than they usually bear, 134, 135
- various meanings given to words, 135
 - even in the same Act, 136
- words to be read according to subject matter, 137—141
 - is meaning of words affected by change of circumstances? 141
- exception to general rule of construction where language is doubtful, 141, 142
- contemporanea expositio* to be regarded, 142
 - evidenced by unbroken usage, 143—146
 - which must be uniform and general, 146
 - by judicial decisions, 147—150
- convenience or expediency, 151—153
- latitude allowed in construction of ancient statutes, 214, 215
- words used for examples, 215—217
- liberal, *see* LIBERAL CONSTRUCTION, REMEDIAL STATUTES.
- strict, *see* STRICT CONSTRUCTION, PENAL STATUTES.
- sometimes influenced by title of statute, 275, 276
- affected by general headings of groups of sections, 294—296
- repealed Act may be looked at on question of construction, 345, 346

CONTEMPORANEA EXPOSITIO

- may be regarded where language is doubtful, 142
 - evidenced by unbroken usage, 143—146
 - which must be uniform and general, 146
 - or by judicial decisions, 147—150

CONTEXT

- to be considered in construing any part of statute, 111
- language may be modified if repugnant to, 112
- general words restrained by, 173

CONTRACTOR.

- persons on whom duty is imposed by statute are liable for the negligence of a contractor, 68, 69

CONTRACTS

- contrary to the policy of statutes are void, 66

CONTRACTS (*continued*)

- in violation of statutes are void, 80
- no action can be brought upon them, 81
 - unless penalties are imposed for the protection of the revenue only, 83—85
- not avoided where infringement of the law not contemplated, 85
 - where one of the parties to the contract is not a sharer in any illegal transaction, 85

CONVENIENCE,

- greater or less degree of, not to be considered, 104

COPYRIGHT ACTS

- apply only to persons publishing in the United Kingdom, 33

COSTS.

- are statutes giving costs to be construed strictly ? 231, 232
- questions as to the repeal of statutes dealing with costs, 319, 321, 322, 339, 340

COVENANT

- may be rescinded by authority of statute, 29

CROWN

- not bound without express words, 36
- cases in which express words are necessary to bind the Crown, 37—39
- when the Crown is bound by necessary implication, 39
- when the Crown is bound though not named, 40—42

CUMULATIVE PENALTY

- not repealing earlier statute, 324—326

CUSTOM

- may be abrogated by a statute, 29
- not taken away by general words, 177
- or by affirmative statute, 225

DATE.

- statute operates from day of receiving royal assent, 154

DECLARATORY AND ENACTING STATUTES

affirmative words in enacting statutes are imperative, 228, 229
negative words in declaratory Acts are not, 229, 230

DEFICIENCY

in language of statute not to be supplied by judges, 24, 105
not to defeat manifest object of statute, 101

DIGNITY.

general words restrained to things of inferior dignity to those
enumerated, 183, 184
not when they would be deprived of all meaning, 184

DIRECTORY.

words of which primary sense imperative held to be directory,
193
substantial compliance sufficient, 205, 206
where time is fixed within which acts to be done, 207—209
where manner of doing acts is prescribed, 209—211

DIVORCE ACT.

suggestion that express words in Divorce Act were necessary
to dissolve marriage, 49
agreements contrary to the policy of the Divorce Act void, 66

DUTIES.

Acts imposing duties to be strictly construed, 244, 248

EJUSDEM GENERIS.

general words restrained to things *ejusdem generis* with those
enumerated, 179—182
when they follow upon words of limited meaning, 180
or of inferior dignity, 183
not restrained when they would be deprived of all meaning, 184
or when they refer to a larger genus than that enumerated, 185

EQUITY

cannot relieve against a statute, 31
may restrain an application to Parliament, but seldom will, 31
words of remedial statutes extended by equity, 238, 239
most common with ancient statutes, 239—242
words of remedial statutes restrained by equity, 242, 243

EVASION

- of statute not allowed, 64, 65
- difficult to decide what is an evasion, 67, 68
- evasion in popular sense not intended, 68

EVIDENCE.

- authority of statutes which make certificates conclusive evidence must be strictly followed, 62—64
- intention of Legislature not to be inferred from external evidence, 105, 106
- “sufficient” meaning *prima facie*, 139, 140
- statutes altering law of evidence to be strictly construed, 243, 244

EXAMPLES.

- words used for, in ancient statutes, 215, 216
- scarcely ever, in modern statutes, 217
- forms in schedules are used for, 306, 307

EXCEPTION.

- distinction between proviso and exception, 304
- exception must be negatived in pleading, 304, 305
- especially if it forms part of enacting words, 305

EXPEDIENCY

- may be considered if the language of statutes is doubtful, 151—153

EXPRESS WORDS

- needed to bind the Crown, 36
- in what cases express words are needed for that purpose, 37—39
- in what cases the Crown is bound by necessary implication, 39
- when the Crown is bound without express words, 40—42
- needed to take away jurisdiction of Superior Courts, 42
 - to take away writ of *certiorari*, 43
 - to give an appeal, 43
 - to take away right of changing *venue*, 44
- whether necessary to give an exclusive jurisdiction to justices of the peace or arbitrators, 45—47
- needed to affect public or private rights, 47—49
- giving statute retrospective operation, 165

EXTENSION

- of operation of statute to matters of subsequent creation, 166—169
 - even in case of Penal Act, 168
- of words of remedial statutes by equity, 238, 239
 - most common with ancient statutes, 239—242
- of language of statutes by reference to Acts *in pari materia*, 268
- of enacting words by recital, 289, 290

FRAUD.

- authority of statute cannot be impeached on the ground that it was obtained by fraud, 24, 25
- statutes for suppression of, to be construed liberally, 233, 234

FREQUENT OCCURRENCE.

- operation of statutes confined to things of most, 169, 170

GENERAL AND SPECIAL STATUTES.

- what are general statutes, 218, 220, 221
- what are special statutes, 218, 221—223
 - terms general and special more appropriate than public and private, 218—220
 - that distinction somewhat ambiguous, 218, 219
 - chiefly affects questions of evidence, 218—220
- general statutes bind the whole community, 220
- how far special statutes affect strangers, 220, 223, 224
- general statutes do not repeal special statutes, 330—332
 - this rule prevailed in early times, 332, 333
 - modern instances in support of it, 333
 - cases where special privileges are given, 334—337
 - where special statutes are repealed by general statutes, 338—340
- general statutes may be repealed *pro tanto* by special statutes, 340, 341

GENERAL HEADINGS.

- construction of sections affected by, 294—296

GENERAL WORDS

- not presumed to alter the previous policy of the law, 20
- operation of, may be restrained, 171
 - not without some reason, 172
 - by the context, 173
 - by recitals, 174, 283—285
 - by subsequent clauses, 174, 175
 - by the subject matter, 175, 176
 - to things in harmony with previous policy of law, 177
 - to things *ejusdem generis*, 179—182
 - to matters of inferior dignity, 183, 184
 - not so as to deprive them of all effect, 184
 - they may refer to a larger genus, 185, 186
 - of reference restricted, 187—189
 - reddendo singula singulis*, 189—191
 - at the beginning of sections, 189—191
 - at the end, 191, 192
- not restricted by title of statute, 274
- sometimes restrained by preamble, 284, 285, 289

GOLDEN RULE.

- what is golden rule for the construction of statutes, 109, 111
- stated by Parke, B., 111
- followed by most of the judges, 112—114
- to what extent it prevails, 114, 115
- what are its limits, 115, 116
- does not allow for consideration of consequences, 116

GRAMMATICAL

- order of sentences to be adopted, 99, 117
- construction, unless leading to absurdity or injustice, 112

HARDSHIP

- not to be considered, 116
- unless language is doubtful, 151—153

HEYDON'S CASE,

- rules in, 108

IMPERATIVE.

- words of which primary sense is permissive held to be imperative, 193
- no general rule on this subject, 193
- much difference of opinion, 194—196
 - as to courts of justice, 194, 195
 - matters of public interest, 195, 196
- cases in which permissive words held to be imperative, 197—199
- where words giving discretion held to be imperative, 199—201
- where words of permission held not imperative, 201—205
- affirmative words are not, 226, 227
 - except in enacting statutes, 228, 229
- negative words are, 227
 - except in declaratory Acts, 229, 230
- forms in schedules are sometimes, 307, 308

IMPLICATION.

- Crown bound by necessary implication, 39
- authority of statutes when extended by implication, 49—52
- when authority not so extended, 52—54
- repeal by. *See* REPEAL.

IMPOSSIBILITY.

- authority of statutes does not extend to impossibilities, 35

INCIDENTS

- in statutes supplied by intendment, 50
- necessary incidents not taken away by general words, 177

INCONSISTENCY.

- language may be modified to avoid inconsistency, 112, 113
- must be inconsistency with other parts of the same Act, 114, 115
- between sections of same Act to be reconciled if possible, 291, 292
- difficulty of such reconciliation, 292, 293
- repeal of earlier statute by inconsistency with later, 310
- what is such inconsistency, 311—314

INCORPORATION.

- preventing repeal of a statute, 342, 343

INDICTMENT.

- authority of statutes may be enforced by indictment, 69
 - except where statute which confers the right creates the remedy, 72, 73
- but right and remedy must be created by same statute, 74—76
 - and same part of statute, 76, 77
 - and must be co-extensive, 77—79
- on statute cannot be supported after its repeal, 347—349

INSERTION

- of words to avoid manifest absurdity or repugnance, 118—120

INTENTION

- of the Legislature a guide to the construction of statutes, 99
- expressions of early writers open to misconception, 100, 101
- the intention means the mind of the Legislature as expressed in words, 102, 103
- not to be guessed at, 103
- not to be inferred from external evidence, 105
 - from Parliamentary history of statute, 105
 - reports of commissions, 106
 - plans and sections, 106
 - debates, amendments, policy of Government, 106, 107
- but previous state of the law to be remembered, 107
- rules in Heydon's case, 108
- not to be defeated by strict construction of penal statute, 255—260
- may be shown by title of statute, 274, 275

INTERPRETATION CLAUSE

- to be strictly construed, 246, 296, 297
- censured by some judges, 296
- not to be too literally followed, 298
- “include” used to extend, not define, 299, 300

JUDICIAL DECISIONS.

- unbroken usage may be evidenced by, 147—150
- may modify language of statutes by current of authorities, 147—150

JURISDICTION

- of Superior Courts not taken away without express words, 42
- doubts whether that conferred on justices of the peace or arbitrators is exclusive or not, 45—47
- when conferred by implication, 50, 51
- authority creating new jurisdiction must be strictly followed, 55
- whether it be civil or criminal, 56
- statutes conferring new jurisdiction or derogating from that of Superior Courts to be construed strictly, 244

JUSTICES OF THE PEACE.

- jurisdiction given to them by implication, 51
- protection given to them where they act under honest belief that they are authorised by statute, 88, 89

KINDS OF STATUTES. *See* ANCIENT AND MODERN, GENERAL AND SPECIAL, PUBLIC AND PRIVATE, AFFIRMATIVE AND NEGATIVE, DECLARATORY AND ENACTING, REMEDIAL AND PENAL, PARI MATERIA, TEMPORARY STATUTES.

LANGUAGE

- not to be extended beyond natural meaning merely to include cases which there is no reason for excluding, 103, 104
- may be modified to avoid absurdity, injustice, inconsistency or incongruity, 112—115
- if it is doubtful *contemporanea expositio* to be regarded, 142
- or convenience or expediency, 151—153

LEGISLATIVE AND JUDICIAL FUNCTIONS.

- distinction between legislative and judicial functions, 9
- duty of the Legislature to make the law, 9
- duty of the judges to expound the law, 9

LEGISLATIVE AND JUDICIAL FUNCTIONS (*continued*).

- how the law is expressed by the Legislature, 10, 11
- what is authentic record of that law, 12
- Legislature presumed to know the law, 12, 13
- effect of erroneous declaration of law, 13
- effect of erroneous recitals, 14, 15
- they may alter the law, 15, 16
- Legislature presumed to know the construction put upon statutes, 16
- not presumed to alter Common Law, 19—21
- when presumed to alter Statute Law, 21
- how law is expounded by the judges, 23
 - not to make or criticise the law, or supply deficiencies, 24
 - not to inquire how statutes were passed, 24
- ancient theories of judicial supremacy, 25
 - as to statutes made against the law of God, 25
 - against natural justice, 26
- modern refutations of those theories, 26, 27

LEGISLATURE.

- how far responsible for uncertainty of Statute Law, 6, 7
- presumed to know the law, 12, 13
- presumed to know construction put upon statutes, 16
 - by the Courts, 16
 - by earlier Parliaments, 17
 - and to sanction such construction, 16—18
- not presumed to alter Common Law unnecessarily, 19—21
- when presumed to alter Statute Law, 21
- intention of the Legislature to govern the construction of statutes, 99
- expressions of early writers on this subject open to misconception, 100, 101
- object is to ascertain the mind of the Legislature as expressed in words, 102—104
- intention of Legislature not to be guessed at, 103
 - or inferred from external evidence, 105
 - such as Parliamentary history of a statute, 105
 - or reports of commissions, 106
 - or plans and sections, 106
 - or debates, amendments, policy of Government, 106, 107
- but previous state of law to be remembered, 107
- rules in Heydon's case, 108
- equally powerful in private as in public Act, 224
- intention of, may be shown by title of statute, 274, 275

LETTER.

- things must be within letter as well as spirit of penal statutes, 249—253

LIBERAL CONSTRUCTION.

- remedial statutes to receive a liberal construction, 230
- what are remedial statutes, 231, 232
- statutes which are partly penal, 232—234
- what is liberal construction, 235—238
- extension of words by equity, 238, 239
- most common with ancient statutes, 239—242
- words restrained by equity, 242, 243

LIMITATIONS, STATUTES OF,

- do not bind the Crown, 38
- “beyond the seas” in, meaning “out of the realm,” 125
- are retrospective, 162
- are they to be construed strictly? 232
- language of, extended by equity, 242
- to be read together as one system, 261
- but express reference to one of them excludes another, 266, 267
- meaning of “rent” and “land” in, 298
- not repealing Private Act, 337

LITERAL

- words not to receive too literal a meaning, 131

MARGINAL NOTES

- no part of sections, 293, 294

MAXIMS,

- a verbis legis non recedendum est*, 102
- ad ea quæ frequentius accidunt adaptantur jura*, 169
- expressio unius est exclusio alterius*, 170
- expressum facit cessare tacitum*, 170
- generalia specialibus non derogant*, 332
- leges posteriores priores contrarias abrogant*, 310, 327
- lex non cogit ad impossibilia*, 35
- nova constitutio futuris formam imponere debet, non præteritis*, 157
- quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*, 64
- quando lex aliquid concedit, conceditur et id sine quo res ipsa esse non potest*, 50

MEANING.

- all words to receive their full and proper meaning, 99
- natural meaning even when apparently not consonant with intention of Legislature, 105

MEANING (*continued*).

- though words incapable of a meaning they cannot be altered,
nor can meaning be supplied, 105
- ordinary meaning to be given to words, unless that leads to
absurdity, injustice, inconsistency or inconvenience, 112
—115
- popular meaning, 122—124
 - unless technical meaning acquired, 124, 125
 - unless popular meaning at variance with proper meaning,
126, 127
- reasonable meaning, 127—129
 - even though not strictly accurate, 130
- not too literal, 131
- wider than usual, 131—134
- narrower than usual, 134, 135
- variety of meanings, 135, 136
- according to subject matter, 137—141
- how far affected by change of circumstances, 141
- cases must be within meaning as well as letter of penal
statutes, 249—253

MERCHANT SHIPPING ACTS

- do not extend to foreign ships unless they are expressly
mentioned, 33
- forms given by, must be substantially followed, 307, 308
- not repealing Lord Campbell's Act, 321

MISTAKES

- may be corrected, 121
- by reference to Act *in pari materiâ*, 264

NEGATIVE STATUTES.

- negative words imperative, 227
- except in declaratory Acts, 229, 230

NEW TERM

- not to be added to statute, 104

NON-USER.

- statutes not repealed by, when words are plain, 342, 343
- but it may remove doubts as to repeal by implication, 343

OBJECT

- of construction to ascertain the intention of the Legislature,
its mind as expressed in words, 99, 102, 103

OBJECT (*continued*)

- of statute not to be defeated by apparent deficiency in its language, 101
- not to be defeated by strict construction of penal statutes, 255—260

OMISSION

- cannot be supplied by the Courts, 24
- unless it be to avoid absurdity or repugnance, 118
- instances in which words have been inserted, 118—120
- omission supplied by reference to Act *in pari materia*, 264

OPERATION OF STATUTES.

- when it commences, 154—156
 - former law worked injustice, 154, 155
 - effect of future day being fixed for commencement, 155, 156
- not usually retrospective, 157
 - instances of statutes which are not retrospective, 158, 159
 - vested rights of action not defeated, 159, 160
 - nor new rights created, 161
 - statutes which are retrospective, 162
 - statutes not properly called retrospective, 163, 164
 - retrospective operation given by express words, 165
 - retrospective operation in cases of practice or procedure, 166
- extended to matters of subsequent creation, 166—169
 - even in case of Penal Act, 168
- confined to things of most frequent occurrence, 169, 170
- confined to things expressly mentioned, 170, 171
- of general words restrained, 171
 - not without some reason, 172
 - by the context, 173
 - by recitals, 174
 - by subsequent clauses, 174, 175
 - by the subject matter, 175, 176
 - to things in harmony with previous policy of law, 177
 - conflict of opinion, 178, 179
 - to things *ejusdem generis*, 179—182
 - to matters of inferior dignity, 183, 184
 - not so as to deprive them of all effect, 184
 - they may refer to a larger genus, 185, 186
 - of general references restricted, 187—189
 - reddendo singula singulis*, 189—191
 - where general words are at the beginning of a section, 189—191
 - where they are at the end, 191, 192

OPERATION OF STATUTES (*continued*).

- affected where words are held to be imperative or directory, 193
- no general rule on this subject, 193
 - conflicts of opinion, 194—196
- cases in which words of permission held to be imperative, 197—199
- where words giving discretion held to be imperative, 199—201
- where words of permission held not imperative, 201—205
- effect of regarding language as directory, 205, 206
- statutes fixing a time considered directory, 207—209
- statutes prescribing manner in which things to be done directory, 209—211
- restrained where words of prohibition are modified, 211, 212

ORDER.

- sentences to be read in the order adopted by the framers of a statute, 99, 117

PARI MATERIA.

- statutes *in pari materia* to be read together as one statute, 260, 261
- judicial interpretation of one Act to be followed in another, 262
- legislative interpretation of one Act to be followed in another, 263
- provisions made for one Act adopted in another, 264—266
- does express reference to one Act extend to another *in pari materia*? 266, 267
- extension of language by reference to Acts *in pari materia*, 267, 268

PARLIAMENT ROLL

- formerly only authentic record of statute, 12
- engrossed without punctuation, 12
- Acts not divided into sections upon, 290, 302, 303

PARLIAMENTARY HISTORY

- wisely inadmissible to explain statute, 105

PARTS OF A STATUTE. *See* TITLE, PREAMBLE, CLAUSES, SECTIONS, PROVISOS, SAVINGS, EXCEPTIONS, SCHEDULES.

B B

PENAL STATUTES

- extended to matters of subsequent creation, 168
- statutes which are partly penal may be liberally construed, 232—234
- to receive a strict construction, 243
- what are penal statutes for this purpose, 243—246
- what is strict construction, 246—248
 - close adherence to the letter of statutes, 249—253
 - cases not brought within the meaning of the statutes, 253—255
 - object of statute must not be defeated, 255—257
 - instances in which this rule has been followed, 258—260

PENALTY.

- repeal by change of, 322—324
- not by adding cumulative penalty, 324—326

POLICY.

- agreements contrary to policy of statute are void, 66
- of government cannot be considered in construing statute, 107
- general words restrained to things in harmony with previous policy of the law, 177

POPULAR MEANING

- to be given to words, 122—124
 - unless technical meaning has been acquired, 124, 125
 - unless it is at variance with proper meaning, 126, 127

PREAMBLE

- not to restrain larger words in body of Act, 110, 278
 - unless vague or ambiguous, 279
- key to open minds of makers of statute, 111, 277
- effect usually given to it, 278
- instances in which enacting words have gone beyond the preamble, 280—282
- instances of enacting words being restrained by preamble, 284, 285, 289
 - conflicts of opinion, 286—289
- may extend enacting words, 289, 290

PRESCRIPTION.

- no prescription against a statute, 31
 - unless it be affirmative or declaratory, 229, 230

PRESUMPTION

- that Legislature knows the law, 12, 13
- that Legislature knows construction put on statutes by Courts
and by earlier Parliaments, 16—19
- that Common Law not altered unnecessarily, 19—21
- that statute law altered by change of language, 21—23
- that every man knows the statute law of the realm, 30
- against retrospective legislation, 157
- of repeal by implication not to be adopted lightly, 317, 318

PROCEDURE.

- retrospective operation in cases of practice or procedure, 166

PROTECTION

- given by statutes to those who act under their authority, 87
- to what persons it is given, 87, 88
 - justices of the peace, 88, 89
 - constables and other officers, 89, 90
 - persons executing public works, 91
- in cases of omission, 91
- to what persons it is not given, 92—94
- there must be honest belief that acts done are authorised,
94—96
- reasonable belief not necessary, 96, 97
- but there must be some grounds for such belief, 97, 98

PROVISO

- to be construed strictly, 246, 303¹
- no real distinction between it and saving clause, 300, 301
- suggested distinction between them, 301, 302
- importance and effect of proviso, 302, 303
- cannot enlarge enacting words, 303
- distinction between proviso and exception, 304
- proviso need not be negatived in pleading, 304

PUBLIC AND PRIVATE STATUTES.

- terms general and special more appropriate, 218—220
- distinction between public and private statutes chiefly affects
question of evidence, 218—220

REASONABLE MEANING

- always to be given to words, 127—129
- even if not strictly accurate, 130

RECITAL

- either of fact or law not conclusive, 14, 15
- may alter the law, 15, 16
- general words restrained by, 174, 283—285
- effect of, similar to that of preamble, 282, 283
- conflicts of opinion as to the restriction of general words by, 286, 289

REDDENDO SINGULA SINGULIS.

- general words of reference restricted by this means, 189—191

REFERENCE,

- general words of, restricted, 187—189
 - reddendo singula singulis*, 189—191
 - where general words occur at the beginning of a section, 189—191
 - where they occur at the end, 191, 192
- words of reference preventing the repeal of a statute, 342, 343

REMEDIAL STATUTES

- to receive a liberal construction, 230
- what are remedial statutes, 231, 232
- statutes which are partly penal, 232—234
- what is liberal construction, 235—238
- extension of words by equity, 238, 239
 - most common with ancient statutes, 239—242
- words restrained by equity, 242, 243

REPEAL

- by temporary statute may be perpetual, 270
- not by form in a schedule, 307, 342
- express, 309
 - may be in same session as enactment, 309
 - does not revive statutes already repealed, 309, 310
 - repealed Act in force till new provisions take effect, 310
- by implication, 310
- what is inconsistency between two statutes, 311—314
- statute repealed by another passed in same session, 315, 316
- one part of statute repealed by another, 316
 - such repeal only presumed in an extreme case, 317
- repeal by implication not to be presumed without great care, 318
 - where it will not be presumed, 318, 319
 - limited to part which is repugnant, 320
- modification of earlier statute substituted for repeal by implication, 320—322

REPEAL (*continued*).

- repeal by change of penalty, 322—324
 - by alteration in description of offence, 323
- not by cumulative penalties, 324—326
- repeal not usually effected by affirmative words, 326—328
 - unless they introduce a new law, 328—330
- special Acts not repealed by general, 330—332
 - rule prevailed in early times, 332, 333
 - modern instances in support of it, 333
 - cases where special privileges are given, 334—337
- special Acts not repealed by subsequent special Acts, 338
- where special Acts may be repealed by general Acts, 338—340
- general Acts may be repealed *pro tanto* by special Acts, 340, 341
- repeal cannot be effected by non-user, 341, 342
 - by words of reference, 342
 - by recital of intention to repeal without proper repealing words, 342
 - by unnecessary continuance of perpetual Act, 342
- repeal prevented by incorporation or reference, 342, 343
- repeal delayed by saving clause as to pending proceedings or rights already acquired, 343, 344
- repealed Act to be considered as if it never existed, 344, 345
- but it may be looked at on question of construction, 345, 346
- repeal of one clause does not alter the construction of rest of statute, 345, 346
 - but may take away an exemption, 347
- effect of repeal on powers given by statutes, 346—349
 - such powers cannot be exercised, 346, 347
 - nor can offences against the repealed statute be punished, 347—349
 - vested rights sometimes kept alive, 348, 349

RESPONSIBILITY

- imposed by statutes cannot be shifted, 68

RESTRICTION

- of operation of statute to matters arising after its passing, 157—166. *See* RETROSPECTIVE OPERATION.
- of operation to things of most frequent occurrence, 169, 170
- of general words, 171—186. *See* GENERAL WORDS.
- of words of reference, *reddendo singula singulis*, 187—192
- of operation where words of prohibition are modified, 211, 212
- of words of remedial statutes by equity, 242, 243
- of enacting words by preamble or recital, 283—286, 289

RETROSPECTIVE.

- statutes not usually retrospective, 157
- what statutes are not, 158, 159
 - vested rights of action not defeated, 159, 160
 - nor new rights created, 161
- what statutes are, 162
- what statutes are not properly called retrospective, 163, 164
- operation given by express words, 165
- operation in cases of practice or procedure, 166

REVIVAL.

- statute not now revived by repeal of repealing statute, 309, 310

RIGHTS.

- public or private rights not affected without express words, 47—49
- cannot be enforced by indictment or action when same statute confers a right and creates a remedy, 72
- vested rights of action not defeated by retrospective legislation, 159, 160
 - nor new rights created, 161
- Acts taking away vested rights to be strictly construed, 244
- granted by statutes may be kept alive after repeal, 348, 349

SAVING CLAUSE.

- no real distinction between it and proviso, 300, 301
- suggested distinction between them, 301, 302
- cannot enlarge enacting words, 303
- may delay repeal of statute as to pending proceedings, 343, 344

SCHEDULES.

- where variance between Act and schedule, Act prevails, 306, 307
- forms in schedules merely examples, 306, 307
 - but are sometimes imperative, 307, 308
- forms in, do not effect a repeal of an earlier statute, 307, 342

SECTIONS.

- statutes now divided into sections, 290, 291
- all sections to be read together, 291
 - but not necessarily construed alike, 291
- inconsistent sections to be reconciled if possible, 291, 292
- difficulty of reconciling them, 292, 293
- marginal notes no part of sections, 293, 294
- general headings to groups of sections, 294—296
- interpretation clause, 296—300
 - not followed strictly, 298
 - “include” used to extend, not define, 299, 300

SENTENCES

to be read grammatically in the order adopted by the framers of a statute, 99, 117

SPECIAL STATUTES.

what are special statutes, 218, 221—223
 how far they affect strangers, 220, 223, 224
 are not repealed by general statutes, 330—332
 this rule prevailed in early times, 332, 333
 modern instances in support of it, 333
 cases where special privileges are given, 334—337
 not repealed by subsequent special statutes, 338
 where they may be repealed by general statutes, 338—340
 may repeal general statutes *pro tanto*, 340, 341

SPIRIT.

things must be within the spirit as well as the letter of penal statutes, 249—253

STATUTE LAW

usually defined as *lex scripta*, 1
 definition implies a certainty which does not exist, 2
 causes of uncertainty of Statute Law, 2—8
 1. Imperfection of language, 2, 3
 2. Language and style of statutes themselves, 3, 4
 Partly due to framers of statutes, 5
 Partly to the Legislature, 6
 3. Judicial interpretation, 7, 8
 suggested definition of Statute Law, 8
 distinction between legislative and judicial functions, 9
 alterations in, when presumed, 21
 from change of language, 21
 from re-enactment of former provisions in different language, 21—23

STATUTES.

means by which national will is expressed, 8, 9
 must be expressed by the three branches of the Legislature, 10, 11
 meaning of the word statute, 10
 what is and what is not a statute, 10, 11
 what is authentic record of statutes, 12
 erroneous declaration of law in statutes inoperative, 13
 recitals of fact or law in statutes not conclusive, 14
 declaration or recitals may alter the law, 15
 how expounded by the judges, 23

STATUTES (*continued*).

- judges cannot inquire how statutes were passed, 24
- statutes against the law of God or natural justice formerly held void, 25, 26
- authority of. *See* AUTHORITY.
- construction of. *See* CONSTRUCTION.
- operation of. *See* OPERATION.
- kinds of. *See* ANCIENT AND MODERN, GENERAL AND SPECIAL, PUBLIC AND PRIVATE, AFFIRMATIVE AND NEGATIVE, DECLARATORY AND ENACTING, REMEDIAL AND PENAL, *PARI MATERIA*, TEMPORARY STATUTES.
- parts of. *See* TITLE, PREAMBLE, CLAUSES, SECTIONS, PROVISOS, SAVINGS, EXCEPTIONS, SCHEDULES.
- repeal of. *See* REPEAL.

STRICT CONSTRUCTION

- of special powers given by statutes, 54
 - where new jurisdiction is conferred, 55
 - whether civil or criminal, 56
- where matters of public interest are concerned, 57
- where statute authorises an interference with private property, 59
- where bye-laws are made in pursuance of statutes, 61
- where certificates are given in pursuance of statutes, 62
- of special Acts giving power to companies, 222, 223, 245
- of penal statutes, 243
 - what are penal statutes for this purpose, 243, 246
- of interpretation clause, 246, 296, 297
- what is strict construction, 246—248
 - close adherence to the letter of statutes, 249—253
 - cases not brought within the meaning of the statutes, 253—255
 - object of statute must not be defeated, 255—257
 - instances in which this rule has been followed, 258—260

STRANGERS.

- how far bound by special statutes, 220, 223, 224

SUBJECT MATTER.

- words to be read according to, 137, 141
- general words restrained by, 175, 176

SUBSEQUENT CREATION.

- operation of statutes extended to matters of, 166, 169
- even in case of Penal Act, 168

SUPERIOR COURTS.

- jurisdiction of, not taken away without express words, 42
- whether jurisdiction is taken away by statutes giving jurisdiction to justices of the peace or arbitrators, 45—47
- statutes derogating from jurisdiction inherent in Superior Courts to be construed strictly, 244

TAXES.

- Acts imposing taxes to be strictly construed, 244, 248

TEMPORARY STATUTES.

- what are, 269
- distinction between them and repealed statutes, 269, 270
- repeal by temporary statutes, 270
- perpetual statute not rendered temporary if continued unnecessarily, 270, 271

THINGS DONE IN PURSUANCE OF A STATUTE.

- meaning things intended to be done, 87
- or things omitted, 91
- if there is an honest belief that the things done are authorised, 94
- a reasonable belief not necessary, 96
- but there must be some grounds for the belief, 97

TITLE.

- question whether title part of a statute, 272, 273
- mode in which it passes, 273
- cannot restrict the effect of general language, 274
- may show the intention of the Legislature, 274, 275
- sometimes influences the construction of statutes, 275, 276
- full title need not be cited, 277

USAGE.

- evidence of *contemporanea expositio*, 143—146
- must be uniform and general, 146

VENUE.

- right of changing venue not taken away without express words, 44

VOID.

- acts which are void may be confirmed and rendered valid by statute, 29
- agreements contrary to the policy of statutes are void, 66
- contracts in violation of statutes are void, 80
- things declared void considered voidable only, 211

WHOLE

- of each statute to be considered, 99, 108—111

WORDS *General definition, 179-182*

- cannot be added to statutes, 52
- all words to receive their full and proper meaning, 99, 117, 118
- things within the words not within the purview, 101
- object of judicial construction to ascertain the mind of the Legislature as expressed in words, 102—104
- to receive their natural meaning, even when it is doubtful if that agrees with intention of Legislature, 105
- may only be inserted to avoid manifest absurdity or repugnance, 118
- instances in which they have been inserted, 118—120
- instances of mistakes being corrected, 121
- to have their ordinary grammatical meaning, 122
 - popular meaning, 122—124
 - unless technical meaning has been acquired, 124, 125
 - unless popular meaning at variance with proper meaning, 126, 127
- always to receive reasonable meaning, 127—129
 - even though that not strictly accurate, 130
- not to be read too literally, 131
- read in wider sense than they usually bear, 131—134
 - in narrower sense, 134, 135
- various meanings given to them, 135
 - even in the same Act, 136
- to be read according to subject matter, 137—141
- is their meaning affected by change of circumstances? 141
- used for examples in ancient statutes, 215—217
- ambiguous words in one Act explained by Act *in pari materia*, 263
- enacting words may go beyond the preamble, 280, 282
 - but are sometimes restrained by it, 284, 285, 289
 - are sometimes extended by it, 289, 290
 - cannot be enlarged by proviso or saving clause, 303

WORDS AND PHRASES.

- "abbots, priors, &c.," not including bishops, 183
- "Act to be passed," including Act passed, 156
- "aforesaid" may refer to earlier part of Act, or section, 188
- "afternoon Divine service" used in popular sense, 122
- "ancestor," including predecessor, 240
- "and" read as "or," 130
 - not in penal statute, 252
- "any act" restrained by recital, 283, 284
- "any will or codicil" limited to wills and codicils of real estate, 275, 276, 289
- "appraiser," meaning professional appraiser, 134
- "apprentice," when including article clerk, 138
- "article other than eggs, butter, or fruit," including a horse, 186
- "beyond the seas," out of the realm, 125
- "Bishop of Norwich," put for example, 215
- "Bohea tea," in its trade sense, 124
- "bread usually sold," at what time? 141
- "bridge," not including floating bridge, 126
- "captain," including conductor, 258
- "carts carrying manure," including carts going for manure, 237
- "cities, towns, corporate boroughs, and places," do not include places not incorporated, 182
- "competent" not mental capacity, 140
- "contract," including bond, 123
- "copper and other metals," not including gold and silver, 184
- "county, riding, or other division," meaning other similar divisions, 182
- "courts baron and other courts," extending to courts at Westminster, 184
- "crew," including officers, 259
- "dead, absent, or otherwise incapable of acting," including disqualification, 186
- "debt contracted," whether confined to contracts, 125
- "disclosure," statement for first time, 129
- "district surveyor or other person," other official, 183
- "doors of all the churches," principal door of each church, 129
- "drawing more than five feet of water" means ordinary draught, 259
- "employed in transportation of slaves," includes outward voyage, 259
- "entitled to vote" in penal statute, 250
- "exported from a port" used in popular sense, 122
- "fabricate" implies criminal intention, 254
- "fence," including ditch, 130
- "fodder for cattle," including barley about to be ground into meal, 237

WORDS AND PHRASES (*continued*).

- "forthwith," within reasonable time, 132
- "found committing," 97
- "gold and silver" not pure gold and silver, 124
- "government or other stock," including railway shares, 263, 264
- "hereinbefore" may refer to earlier parts of Act, or section, 187
- "hospital" used popularly, 122
- "house, office, room, or other place," including an umbrella, 185
- "house or place," whether including portable booth, 127
- "immediately," within reasonable time, 132, 133
- "inability" not inability to pay debts, 140
- "include," used to extend, not define, 299, 300
- "insolvent circumstances," used in popular sense, 122
- "instrument of gaming" in penal statute, 250
- "issued" not changed into "levied," 131
- "King George," applicable to the sovereign for the time being, 217
- "land," including fishery, 130
 - not including tithes as chattel, 298
- "lands, tenements, and hereditaments" confined to things *ejusdem generis*, 180
- "leaving at registry," not meaning personal service on registrar elsewhere, 250
- "man," not including woman, 123
- "man, dog, or cat," including all animals, 216
- "manors or other royalties," royalties of same nature, 183
- "marry" used in different sense in same section, 136
- "mask, dress, or other thing," including crow bar, 185
- "may," whether imperative, 196, 197, 199, 204
- "minerals," not confined to metals, 126
- "nature of interest," including quantity, 141
- "near," meaning of, in penal statute, 249
- "next," next practicable, 133
- "obstruction of mail," not including arrest of its carrier, 128
- "on" or "upon," meaning either at or after a time, 139
- "owner," including trustee, 125
- "paper" made from animal fibre, 134
- "parish" not restricted by interpretation clause, 298
- "parochial rates" same as "taxes of the parish," 264
- "parsonage or vicarage," not including curacy, 249
- "party wall," 31, 32
- "person or persons" may include corporations, 131
- "preferred," meaning tried, 133
- "progenitors," meaning predecessors, 132
- "purchaser," in commercial sense, 124

WORDS AND PHRASES (*continued*).

- "relief to widow" may be relief to children as well, 126, 127
- "rent," meaning annual value, 130
 - used in different senses in same section, 136
 - not including rent reserved by lease, 298
- "residence" construed according to subject matter, 140
- "sewer," including wall, 130
- "shall be lawful," whether imperative, 194, 195, 201, 202, 203, 205
- "ship" not restrained by interpretation clause, 299
- "single woman," including widow or married woman, 236, 237
- "spirits," not including sweet spirits of nitre, 123
- "street" not restrained by interpretation clause, 300
- "sue" confined to actions, 125
- "sufficient evidence," *prima facie* or more, 139, 140
- "taxed cart," technical meaning, 125
- "things done in pursuance of an Act," 87
- "this Act," not including other penal statutes, 252, 253
 - but including other Acts *in pari materia*, 264—266
- "timber, stone, or other thing," not including straw, 180
- "to give his vote" means before voting, 250
- "town," used in popular sense, 122
- "tradesmen, artificers, or other persons," not including attorneys or farmers, 182
- "void" construed voidable, 211, 212
- "worsted" distinct from wool, 124
- "wreck," not including drift timber, 129

THE END.

